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## PROSPECTS FOR THE REGULATION OF INTERNATIONAL JOINT VENTURES

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**Summary.** *An international joint venture is an international legal relationship or agreement, upon which parties are bound to act together for a particular aim or for particular activities and due to this, to unify their property, labour and knowledge. The international joint venture is one of the most common forms of international business, a popular model for investment, and has become a traditional form of business since 1950<sup>1</sup>. However, such activities are quite new to international law and due to this, joint ventures as commercial instruments have often been treated quite ambiguously. Legal theory and practice face difficulties in assigning this institution to a specific branch of law, which leads to problems in legal qualification and applicability. In this article the author attempts to outline prospects for the regulation of international joint ventures and defines the main potential problems that could arise in this process. The conclusion is made, that although the necessity for regulation in this area is evident, the preconditions for it are quite weak and this leads to possibilities of “soft law” regulation.*

**Keywords:** *joint venture, regulation, unification, harmonization, „soft law“.*

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1 ITC Contractual Joint Venture Model Agreements, 2004. *International Trade Centre Unctad/wto*. Geneva: ITC, (Trade Law Series), United Nations, 2004, vii, p. 107.

## Introduction

International joint venture is a popular form of international business or investment. Its regulation is limited to several national laws and model agreements. Problems with regard to international joint ventures arise because of the divergence of its concept, which also limits the possibilities of international regulation thereof. Despite this, the extent of international joint venture activities is increasing, which means that an international mechanism of such importance should be internationally regulated by legal acts. As international joint ventures are not regulated internationally, it is important to ascertain whether the preconditions for such regulation exist and what further legal decisions are to be expected in this area. The subject of analysis in this article is the regulation of international joint ventures and future prospects for their regulation. The subject in question has not been studied by Lithuanian authors thus far. Neither has the entity of international joint venture itself received any academic attention. The methods applied in the study include analogy, analytical, comparative, predictive analysis.

This article focuses on the following main preconditions for international regulation: the practical need for regulation, the uniformity of a developed international relationship which leads to the possibility of international coordination, regulative means in the legal system sufficient enough to satisfy the needs of regulation. Accordingly, for every particular situation, a configuration of these preconditions leads to different possibilities for regulation. In the case of international joint ventures, the most appropriate regulatory approach is that of „soft law“.

The article begins with a short analysis of the concept of international joint venture and an overview of current regulation (including critical issues of regulatory inadequacy in practice). Subsequently, it analyzes the main preconditions for international regulation, and finally identifies specific models for the regulation of international joint ventures.

## 1. The Concept of Joint Venture and Current Regulation

### 1.1 The Concept of Joint Venture

The main problem with international joint ventures is the *differentiation of their concept* among the regulatory frameworks of different nations, as well as in positions expressed by legal doctrine and practice. The basic questions of qualification in this context are these: whether a given relationship between parties constitutes a joint venture or only some other long-term coordinated relationship; second, whether the relationship is of national or international nature. Joint venture agreements should be distinguished from other agreements resembling joint ventures, which are usually coordinative to some extent (usually due to their continuity), for example, supply of goods or services, scientific research, licensing etc. “The agreement of commercial activities may only be treated as the agreement of joint venture if it satisfies these minimal requirements: first

of all, it shall indicate the common aim (project) which is to be achieved by the parties, the second, the agreement shall indicate that due to this aim the parties consolidate their efforts and (or) property”.<sup>2</sup>

There are many arguments for and against the use of such concepts as “joint venture - enterprise”, “contractual joint venture” and “joint venture - the form of investment”. The author of this article bases his thesis on a concept that is used in the works of German lawyers (especially Ian Hewitt<sup>3</sup>, who is a participant in the joint venture model agreements’ preparation group). According to them, an international joint venture may manifest in three forms:

- Contractual joint venture;
- Joint venture – partnership (or other non corporative legal form);
- Incorporated joint venture (usually a joint stock company).

All these forms may also occur as the investments, if they satisfy the set national requirements for investments. These forms also fall in two categories of joint ventures: joint ventures that are performed on a contractual basis and joint ventures that are performed on the basis of business organisation forms (as legal persons). In the strict sense, current international practice defines a joint venture as a joint entity, established by natural or legal persons, who incorporate their assets, money, other organizational capital, raise specific aims for their joint company and agree to share profit, loss, management and control in more or less equal parts. Partners are free to choose the legal form of their entity. A joint venture in the broad sense is an agreement under which parties agree to act together for a particular aim or in particular activities and under this aim to combine their property, labour and knowledge, without establishing a new legal organizational entity.

The international joint venture has a complex integrative character and quite often involves relationships that are regulated under laws of different legal branches: contract law, company law, tax law, labour law etc. If these aspects were unified at the international level, they could solve some problems concerning international joint ventures, although this kind of regulation would not reflect the nature and character of joint venture itself and the regulation it would need. Provisions of some of these regulations are treated as imperative or public and deviations from them are not usually permitted, as far as they state the most important values and political provisions of a specific state. To summarise, a joint venture may be viewed as an instrument of contract law or company law, but in both cases it may also subject to investment law regulation.

## 1.2. Regulation of Joint Ventures

Currently, international joint ventures per se are only regulated at the national level, except some initiatives in model agreements regarding joint ventures in years 2004<sup>4</sup> and

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2 Marcinkevičius, L. Tarptautinės jungtinės veiklos samprata tarptautinėje privatinėje teisėje. *Jurisprudencija*. 2007, 11(101).

3 Hewitt, I. *Joint Ventures*. 3<sup>rd</sup> edition. London: Sweet & Maxwell Limited, 2005.

4 ITC Contractual Joint Venture Model Agreements, 2004, p. 107.

2005<sup>5</sup> (International trade centre, UNCTAD). These model agreements provide both contractual and enterprise models for joint ventures. As for the contractual aspect of joint ventures, some regulation might be prescribed in common legal regulation (for example, the 1980 Rome convention on law applicable to contractual obligations<sup>6</sup>, Principles of European contract law<sup>7</sup> etc.). As far as the joint venture agreement is a multilateral agreement, concluded between the parties acting towards third persons, the mentioned common regulation is not sufficient because of its abstractiveness but also because it is most suited for application in bilateral agreements. When a joint venture takes the organisational form of legal person, it is regulated first of all by the laws of European company law. The question of joint venture regulation in the scope of investment law is also conditional, first of all, because the concept of “investments” is not yet clear, even if the joint venture usually corresponds to the concept of investments and, the incorporated joint venture – to the concept of direct investments. Detailed regulation of joint ventures in the scope of investment law should not be expected because of the specific aims and the particular features of this branch of law. Despite this, the instruments that are used in investment law are intervening in the context of joint venture practice and propose their own solutions. Stabilization clauses, investment agreements and application of common legal principles could be mentioned as examples of such prospects.

*The application of stabilization clauses in investment law.* A stabilization clause is a provision in an agreement which states that the country where the investments take place shall refrain from changes to its laws for the period of that agreement. Andrea Shemberg<sup>8</sup> identifies these clauses: freezing clauses (that prohibit any legislation in specific areas), economic equilibrium clauses (legislation which places the investor in a worse position recognized as basis for compensation) and hybrid clauses. The stabilization clause is recognized as an important tool for investment risk management, especially in cases where the investor depends on the political will of the country receiving the investment. In joint ventures this situation arises when a foreign country or its governmental body is the indispensable partner in the joint venture. In the view of an investor, this measure allows for the protection of investments from the changing legal environment of the business. In the 1960s, specialists of constitutional law were particularly critical of the stabilization clause, arguing that it placed limits on a country’s sovereign legislative powers and created a position of privilege for the investor with regards to the jurisdiction of the country. Even today this clause does not lose its practical significance. It is applied in new forms and is more often expressed in economic discourse. Some authors point out that stabilization clauses are subject to the common international law principle

5 ITC Incorporated Joint Venture Model Agreements, 2005. *International Trade Centre Unctad/wto*. Geneva: ITC, (Trade Law Series) United Nations, 2005, vii, p. 129.

6 1980 Rome Convention on the Law Applicable to Contractual Obligations. *Official Bulletin of European Union*. 2005, C 169/10 (Rome Convention).

7 Principles of European Contract Law [interactive]. Commission on European Contract Law, 1999 [accessed 2008-09-09]. <[http://frontpage.cbs.dk/law/commission\\_on\\_european\\_contract\\_law/Skabelon/pecl\\_engelsk.htm](http://frontpage.cbs.dk/law/commission_on_european_contract_law/Skabelon/pecl_engelsk.htm)>.

8 Shemberg, A. *Stabilization Clauses and Human Rights*. Research Project conducted for IFC and the United Nations Special Representative to the Secretary General on Business and Human Rights, March 11, 2008.

of *pacta sunt servanda* and due to this should be treated as valid. Others argue that this clause should not be valid under the principle of state sovereignty based on international public law and constitutional law. Nevertheless, arbitrage practices have shown that these clauses should be treated as valid. In the *Aminoil v. Kuwait*<sup>9</sup> case the Tribunal pointed out that such a clause might be valid if it is established for a reasonable and limited term. However, the answer to the question of whether countries are obliged to limit their legislation or to limit the application of some laws for specific subjects, is avoided, as it is deemed indecorous and awkward in the view of international public law.

*Conclusion of investment agreements.* In this particular case, we will avoid the question of international agreements between states concerning investment matters and focus our attention on agreements concluded between private persons (investors) and countries receiving the investments (i. e. government or governmental entities). These agreements are not private, because they are too closely linked with the applicability of the state's public and mandatory laws, while at the same time they are not international because one of the parties is a private person and lacks the capacity of an international subject. If this were a truly international agreement, principles of common international law and the Vienna convention on the law of treaties (1969)<sup>10</sup> would apply, including the clause that a state cannot fail in executing its international agreements because of its internal regulations. In this case, the lack of clear international commitments leads many authors to the strained internationalisation of such agreements (according to Sornarajah<sup>11</sup>). Usually they remark that international investments are the area that deserves international interest. Despite this, the doctrine of law may not unambiguously accept this view. According to M. Sornarajah, when an international investment agreement is concluded between a private person and a state, a problem arises, wherein the principle of party autonomy is constructed for application between private persons, while on the other hand, the state or its governmental bodies (in this particular case, the other party of the joint venture) enters into an agreement of a public-administrative nature regulated under its own public law. Even though international practice has refused the principle of absolute state immunity, it is evident that international joint ventures face questions of public law much more often than they do those of private law.

The mentioned issue is of concern when considering the application of the *pacta sunt servanda* principle to international joint ventures the as the result of the *application of common legal principles*. It should be noted that the said issue, though suitable for solving the question of investment safety, is based on a selective view with regard to common legal principles. Supporters of this application of common legal principles usually refer only to principle of *pacta sunt servanda* itself, neglecting its limitations. Firstly, the principle is limited by various reservations and is no longer absolute. Most countries acknowledge reservations for the protection of public interest and like values in their legal systems. Secondly, any foreigner arriving in a given country is obliged to

9 *Aminoil v. Kuwait* (1982), 21 ILM 976.

10 Vienna Convention on the Law of Treaties. *Official Gazette*. 2002, No. 13-480.

11 Sornarajah, M. *The International Law on Foreign Investment*. 2nd edition. Cambridge University Press, 2004.

fully adhere to the laws of the receiving country. To sum up these positions, no definite answer can be given as to whether an investment agreement, which is quite often a joint venture agreement as well, is subject to private or public law regulations. On the other hand, these agreements as well as the principle *pacta sunt servanda* are treated quite liberally in the practice of arbitration. Arbitrages, within the scope of achievable means, are more likely to protect and serve the investors' interests as opposed to legal interests. Due to this, some authors are already pointing out a new "presumption of legitimacy of the investor's actions".

These are only some of the legal issues that arise in practice. It may be suggested, that if a problem arises under investment law, it should be solved within the means of investment law, taking into consideration other provisions of international joint venture regulation. This study is limited to examining what new, modern and effective means could be established for investment protection and investment risk management, and what durable legal instruments might be needed to conclude and guarantee agreements between a state and a private person. It is difficult to foresee the means to achieving these aims, but as far as international investment law is based on bilateral agreements between states, it is likely, that such agreements will be the first means to implement the mentioned initiatives. Reviewed instances also indicate that this legal vacuum calls for international regulation for international joint ventures. This necessity is not limited to investment cases but also needed in situations where a joint venture is established between private persons only.

## 2. Preconditions for International Regulation

International regulation is not a self-serving process. „Here, three factors shape debate: first, globalisations has spawned new relationships between legal norms; second, commercial forces support the trend towards the 'privatisation' of private law; third, questions on the extent of States' legitimate interests have become more important"<sup>12</sup>. In the long term, a legal vacuum creates practical problems for the operation of a particular institution, which is not acceptable in the view of business. Accordingly, we shall discuss the most important preconditions for international regulation and analyse the possible regulation measures determined by them.

First of all, any initiative of international regulation begins with the identification of a particular demand (usually in practice) to devote time, assets and legal space to international negotiations and regulation process, upon recognition that present legal means and instruments are not sufficient regulators for the specific kind of legal relationship. As already mentioned, there is no uniform legal international regulation of international joint ventures. The question of whether investment, contract or company law could satisfy regulatory demand for such an integral institute as international joint ventures,

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12 Mel, K. The 2005 Progress Report on European Contract Law: Towards a European Civil Code? In Mizaras, V. *Šiuolaikinės civilinės teisės raidos tendencijos ir perspektyvos*. [Mizaras, V. Tendencies and Perspectives of Development of Contemporary Civil Law]. Vilnius: Justitia, 2007, p. 148.

can not be answered unambiguously. Practice exposes aspects of joint ventures that are not covered by the mentioned law branches and thus provides its own decisions. To be more specific, there is no basis for the asserting that regulation exists that would cover the essence of joint ventures (not only contractual or company law issues). International regulation of separate law branches or their aspects is usually adapted to classical cases, which means that international joint ventures may be regulated by these laws only in very specific and narrow areas (e. g., tax, environmental protection, customs law etc.). The conclusion follows that practice has not found an appropriate legal means to be applied to international joint ventures, even if some legal regulation of specific issues exists. Accordingly, an increasing number of joint ventures express growing expectations of action by international society with regard to these matters.

The second precondition is the possibility to *achieve agreement* on specific provisions or at least to harmonize positions with regard to a particular institution. There are some cases known in practice, where regulation initiatives have arisen on the basis of long legal traditions and have become quite universal among states (for example, Vienna convention on the international sale of goods<sup>13</sup>). However, this might not be applicable to international joint ventures because of the lack of such traditions. The variety of joint venture concepts does not provide any basis for international regulation (international agreements). Rephrasing J. Merryman, it is not only useless – but indeed risky to expand harmonization efforts into areas where legal differences reflect distinctions in political, social organization, cultural and social customs<sup>14</sup>. Although the possibility of reaching an agreement is one of the basic preconditions for the most strict mode of international regulation – unification, its significance decreases with the advent of “*soft law*” regulation. According to S. Fazio, as new interests arise and complex problems create demand for responsive regulation on the global level, it is very difficult to achieve the common agreement between the parties and to conclude preconditions for a settlement<sup>15</sup>. This explains why “*soft law*” regulations are included even in the otherwise binding international multilateral agreements. This is the basic reason for the increasing popularity of „*soft law*“. Usually this mode of regulation is provided for by international organisations, and furthermore, it does not require any ratification procedures. „The increase in importance of soft law within the international community probably is linked to the necessity of rapid regulation in certain ‘emerging areas’, where the globalization process has impacted most”<sup>16</sup>. Nevertheless, in the context of this precondition, the problem of the lack of authority may be often consequential, even if it is not the most essential critical aspect. In the context of the enactment of “*soft law*“ measures, especially “*lex mercatoria*“ and like means, it is often debated that „the principles are usually created

13 For more information: Zeller, B. *CISG and the Unification of the International Trade Law*. Routledge Cavendish, Taylor and Francis group, 2007.

14 Merryman, J. On the Convergence (and Divergence) of the Civil Law and the Common law. In Cappelletti, M. *New perspectives for Common Law of Europe*. Leiden, London, Boston: Sijthoff, Publications of the European University Institute, 1978, p. 213

15 Fazio, S. *The Harmonisation of International Commercial Law*. Kluwer Law International BV, Netherlands, 2007.

16 *Ibid.*, p. 39.

by the independent experts (members of law practice and theory), and it is quite obvious, that private legal codifications lack legal authority<sup>17</sup>. Usually this lack of authority is evident in initiatives of private, nongovernmental organisations and the documents created under their influence. These documents are usually treated as inexpressive towards the international positions of states, not constituting the current legal tradition and practical demands. Falling short of this precondition, practical problems in regulation of joint ventures cannot be avoided, which may cause failure in reaching the aims of joint venture regulation.

The third precondition of international regulation is the question of whether the appropriate *legal instruments* (within the meaning of the source of law as the form) would be sufficient to implement such regulations. The third precondition is linked with possible regulation measures and their accessibility. Leaving aside the differences between sources of international public and international private law, we should mention that theoretically there is a possibility to use both of these legal instruments (sources). In this context, the possibilities for the international and for the European legislation should be discussed, including regulations in the context of the contract, investment and company law regulations. Unification, harmonisation and “*soft law*” should be considered as the basic means. According to B. Zeller,<sup>18</sup> harmonisation makes the rules similar, and unification makes them the same. Harmonisation in the broad sense also includes these measures: „*soft law*“, custom international legislation, multilateral agreements, international legislation<sup>19</sup>. Here, the concept of harmonisation is used with a specific meaning in the context of European Union (hereinafter, the latter meaning will be used).

Initiatives of international contract law unification are not productive at the moment because negotiations are disrupted by the strict political positions of the states and legal traditions, which are both difficult to modify, as well as the increasing complexity of the international agreements. As far as practice has not answered the question of what should be regulated as an international joint venture (which concept of it and/or type should be provided as the legal meaning) and to what extent, it is difficult to aim at international agreements among states. The unification of contract law in the European Union (contractual joint ventures would fall under these regulations) is far in the future. Despite this, some initiatives concerning European civil code and the Digests of European contract law principles are quite old. A separate unification of contractual joint venture issues and company law issues would artificially divide this institute, which could not be accepted as a pragmatic solution. Separate special legal regulation that would involve both contractual and company law aspects of joint ventures does not have support, neither in legal practice nor in legal doctrine. If a joint venture is discussed in the scope of investment law as the subject of investments, unification is only possible in a very broad sense – as the investment category itself. What is more, these expectations have

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17 Goldammer, Y.; Jurčys, P. Romos I reglamento dėl sutartinėms prievolėms taikytinos teisės projektas: kita to paties medalio pusė? [Goldammer, Y.; Jurcys, P. Proposal for a Regulation Rome I on the Law Applicable to Contractual Obligations: Other Side of the Same Medal?]. *Justitia*. 2008, 1(67).

18 Zeller, B.

19 Fazio, S.

already been expressed. On the other hand, the unification of the total legal scope of international joint ventures within the scope of investment law could hardly be affected; only some partial modifications can be expected.

Harmonisation in the European Union is provided through the legal instrument of directives. As already mentioned, this concept might be used only partially (in the very broad sense) in international regulation. Directives as a mode of regulation should be treated favourably – firstly, they help achieve (totally or partially) the aims that are set for international regulation, and secondly, the means of implementing the aims of the directives are chosen by the states themselves, leaving significant possibilities for decisions by in their legislations. This kind of regulation is quite popular in European Union company law. Such measures are applicable to joint venture entities as far as they are legal persons, although the essential aspect of joint ventures themselves is not reflected therein. Joint ventures, even those merely contractual in form, constitute a significant business organisation form and have some features of companies, such as common capital, election or delegation of management bodies and the like. The author of this article suggests that these aspects provide a basis for the necessity and possible implementation of joint venture harmonisation by measures equivalent to those found in company law.

“Soft law” instruments, recommendations, harmonisation initiatives and model laws or model agreements, especially if they are provided by internationally recognised institutions or at the level of the European Union, are practically implementable and are the most expected of potential solutions. This kind of regulation can at least partially relieve the situation of international joint ventures. A separate question should be raised, whether this would be enough for practitioners. Due to the mentioned conditional accessibility to regulatory measures and due to the possibility of choosing them in practice, it is suggested that this type of regulation is favourable. “Soft law” measures in the scope of European regulation could provide a regulatory basis for solutions of the main problem of international joint ventures – its concept and, respectively, its legal qualification. This measure could also lay the foundations for future regulation of joint ventures that could be more imperative. Considering that initiatives in this area are quite small, final regulation on any level might be far off. However, it is suggested that this type of regulation is most likely according to the current preconditions.

With respect to joint ventures, “soft law” regulation is expected to occur either in the European Union or on the level of international institutions. More imperative regulations are hardly expected. Some insights allow us to propose the idea that regulation of joint ventures is also possible in parallel to European Union Company law as far as joint ventures are a meaningful form of business organisation. Comprehensive international regulation of joint ventures is not possible because of the variety of its concepts and because of the diversity of attitudes towards the essential features of joint ventures and their international nature. Unification measures that are usually painful in the view of national legislation, however, would allow us to solve the practical issues of joint ventures and should be treated as the final objective.

## Conclusions

1. International joint venture is a problematic legal institution. Its concept is not unified and differs from very broad (any agreement of coordinative nature) to very narrow (joint entity). This leads to difficulties in legal qualification of an agreement. International joint ventures may occur in three forms: contractual joint ventures, joint ventures - partnerships and incorporated joint ventures. Respectively, these three forms fall into two categories of joint ventures: joint ventures that are performed on a contractual basis and joint ventures that are performed on the basis of an incorporated legal person (which have an organisational form). As the joint venture meets the concept of investments, it should also be treated as a foreign investments. This allows for a classification of joint venture regulation into three aspects: contract law, company law and investment law.

2. Current regulation of joint ventures is laconic and insufficient, limited to model agreements, common regulation (of contract law and company law), and special regulation of other branches of law (tax law, customs law, labour law etc.). Joint ventures themselves are regulated (if they are regulated at all) at the national level. This legal vacuum in the scope of investment law calls for disputable practical solutions: stabilisation clauses, applicability of common contract law principles, and conclusion of investment agreements. With the number of joint ventures increasing, this leads to the conclusion that regulation demand in this area exists.

3. If the main preconditions for international regulation are practical demand of such regulation, possibility to agree on the scope and content of this regulation and accessible means of regulation, the conclusion is that joint ventures completely meet the first precondition, while serious problems arise due to the second one. The third precondition leads to the possibility of regulation through the measure of "soft law," which is the most needed and possible either on the European Union or the international level. This regulation measure would facilitate the unification of the concept of joint ventures and pave the way to possible imperative regulations in the future. Joint ventures can also be conditionally treated as a form of business organisation in the scope of company law, which leads to the possibility of parallel regulation.

## References

- Vienna Convention on the Law of Treaties. *Official Gazette*. 2002, No. 13-480.
- 1980 Rome Convention on the Law Applicable to Contractual Obligations. *Bulletin of European Union*. 2005, C 169/10 (Rome Convention).
- Principles of European Contract Law [interactive]. Commission on European Contract Law, 1999 [accessed 2008-09-09]. <[http://frontpage.cbs.dk/law/commission\\_on\\_european\\_contract\\_law/Skabelon/pecl\\_engelsk.htm](http://frontpage.cbs.dk/law/commission_on_european_contract_law/Skabelon/pecl_engelsk.htm)>.
- Fazio, S. *The Harmonisation of International Commercial Law*. Kluwer Law International BV, Netherlands, 2007.

- Goldammer, Y.; Jurčys, P. Romos I reglamento dėl sutartinės prievolės taikytinos teisės projektas: kita to paties medalio pusė? [Goldammer, Y.; Jurcys, P. Proposal for a Regulation Rome I on the Law Applicable to Contractual Obligations: Other Side of the Same Medal?]. *Justitia*. 2008, 1 (67).
- Hewitt, I. *Joint Ventures*, 3<sup>rd</sup> edition. London: Sweet & Maxwell Limited, 2005.
- ITC Contractual Joint Venture Model Agreements, 2004, International Trade Centre Unctad/wto, Geneva: ITC, 2004. (Trade Law Series) United Nations.
- ITC Incorporated Joint Venture Model Agreements, 2005, International Trade Centre Unctad/wto, Geneva: ITC, 2005. (Trade Law Series) United Nations.
- Mel, K. The 2005 Progress Report on European Contract Law: Towards a European Civil Code? In Mizaras, V. *Šiuolaikinės civilinės teisės raidos tendencijos ir perspektyvos*. [Mizaras, V. Tendencies and Perspectives of Development of Contemporary Civil Law]. Vilnius: Justitia, 2007.
- Marcinkevičius, L. Tarptautinės jungtinės veiklos samprata tarptautinėje privatinėje teisėje. *Jurisprudencija*. 2007, 11(101).
- Merryman, J. On the Convergence (and Divergence) of the Civil Law and the Common law. In Cappelletti, M. *New perspectives for Common Law of Europe*. Leiden, London, Boston: Sijthoff, Publications of the European University Institute, 1978.
- Shemberg, A. *Stabilization Clauses and Human Rights*. Research Project conducted for IFC and the United Nations Special Representative to the Secretary General on Business and Human Rights, March 11, 2008.
- Sornarajah, M. *The International Law on Foreign Investment*. 2nd edition. Cambridge University Press, 2004.
- Zeller, B. *CISG and the Unification of the International Trade Law*. Routledge-Cavendish, Taylor and Francis group, 2007.

## TARPTAUTINĖS JUNG TINĖS VEIKLOS REGLAMENTAVIMO PERSPEKTYVOS

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**Santrauka.** *Tarptautinės jungtinės veiklos samprata nėra nusistovėjusi ir tai sukelia pagrindinę tarptautinio reglamentavimo galimybės problemą. Jungtinė veikla gali būti trijų formų: sutartinė jungtinė veikla, partnerystės jungtinė veikla bei bendra įmonė. Šios trys formos sudaro dvi jungtinės veiklos rūšis: sutartinę jungtinę veiklą bei jungtinę veiklą, turinčių organizacinę formą. Bet kuri iš šių jungtinės veiklos rūšių kartu gali būti ir investicijų teisės dalykas. Minėtas skirstymas lemia jungtinės veiklos reguliavimo pasidalijimą į sutarčių teisės, įmonių teisės bei investicijų teisės sritis. Dabartinis tarptautinis reglamentavimas yra neapibrėžtas, jungtinė veikla dažniausiai reguliuojama tik nacionaliniu lygmeniu. Augantis šios verslo formos populiarumas bei praktiniai aspektai lemia jungtinės veiklos tarptautinio reglamentavimo poreikį. Pagrindinėmis tarptautinio reglamentavimo prielaidomis galime laikyti esant: praktinį reglamentavimo poreikį, galimybę susitarti dėl reguliavimo dalyko ir apimties bei reguliavimo priemonių prieinamumą. Jungtinė veikla visiškai tenkina pirmąją prielaidą, tačiau neatitinka antrosios. Trečiosios prielaidos ana-*

lizė leidžia daryti išvadą, jog tokia reglamentavimo priemonė kaip unifikavimas dar nėra galima nei tarptautiniu, nei Europos sąjungos lygmeniu, visų pirma dėl jungtinės veiklos sampratos skirtumų. Harmonizavimo priemonė Europos sąjungos lygmeniu galima tik tam tikrais aspektais; kadangi jungtinė veikla yra reikšminga verslo organizavimo forma, galima tikėtis ir tam tikrų reguliacinių priemonių, paralelių Europos Sąjungos bendrovių teisei. „Soft law“ reglamentavimas šiame kontekste yra labiausiai tikėtinas tiek tarptautiniu tiek Europos Sąjungos lygmeniu; jis padėtų pagrindus imperatyvesniam jungtinės veiklos reglamentavimui ateityje.

**Reikšminiai žodžiai:** jungtinė veikla, reglamentavimas, unifikavimas, harmonizavimas, „soft law“.

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