Volume-3, Issue-7, July-2014 • ISSN No 2277 - 8160

Research Paper | Commerce

Joint Ventures in India

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ABSTRACT *The world is looking at India as an attractive investment destination with strategic advantages and lucrative commercial incentives. Over the past year, while numerous economies saw negative GDP growth rates, India posted a growth rate of over 6%. The Indian economy, while not significantly affected during the global recession, is preparing itself for another round of aggressive growth. We have witnessed this through the tremendous growth experienced over the last 10 years in India, in sectors ranging from manufacturing to information technology and services industries. Beyond this, India offers a vast internal market for various products and services. It is therefore apparent that India has a lot to offer to anyone looking to do business here from both the producers' and consumers' perspectives.*

KEYWORDS : Joint venture, GDP growth rates, temporary partnership, The Bombay Stock Exchange (BSE), Articles of Association, Board of Directors (BOD), vast internal market, JV limited by guarantee

INTRODUCTION

Joint venture is a business agreement in which parties agrees to develop, for a finite time, a new entity and new assets by contributing equity. They exercise control over the enterprise and consequently share revenues, expenses and assets. There are other types of companies such as JV limited by guarantee, joint ventures limited by guarantee with partners holding shares.

On the other hand, when two or more persons come together to form a temporary partnership for the purpose of carrying out a particular project, such partnership can also be called a joint venture where the parties are temporary partnership

A joint venture is not to be taken lightly. For a businessperson to embark on a joint venture, he or she needs to be committed and willing to work cooperatively with the other party involved. A person involved in a joint venture can no longer make all of the decisions for the business alone. For it to be truly a "joint venture," there has to be 100% commitment from both sides.

Since money is involved in a joint venture, it is necessary to have a strategic plan in place. In short, both parties must be committed to focusing on the future of the partnership, rather than just the immediate returns. Ultimately, short term and long term successes are both important. In order to achieve this success, honesty, integrity, and communication within the joint venture are necessary.

DEFINATION

A contractual agreement joining together two or more parties for the purpose of executing a particular business undertaking. All parties agree to share in the profits and losses of the enterprise.

JOINT VENTURE IN INDIA

India's has an open philosophy on capital markets and it closely parallels its English peers in operation. The Bombay Stock Exchange (BSE) has close to 5000 listed shares, and trades in several thousand more, making it the largest stock exchange in the world.The National Stock Exchange is the other exchange at present. English is one of the preferred languages of the market and its policies are first announced in English.

The Indian people are skilled and entrepreneurial by nature as evident in world markets but in India less than 1% of its billion population at present – that is, only 11 million people – representing 3% of households invest in the market.

People who 'work' the market in other languages are adept in recognizing concepts in derivatives and futures and trade in them. India is one of three countries that has supercomputers, one of six that has satellite launching facilities and has over 100 Fortune 500 companies doing R&D in the country.

Joint venture companies

JV companies are the preferred form of corporate investment but there are no separate laws for joint ventures. Companies which are incorporated in India are treated on par as domestic companies.

- The above two parties subscribe to the shares of the JV company in agreed proportion, in cash, and start a new business.
- Two parties, (individuals or companies), incorporate a company in India. Business of one party is transferred to the company and as consideration for such transfer; shares are issued by the company and subscribed by that party. The other party subscribes for the shares in cash.

Private companies (only about $2500 is the lower limit of capital, no upper limit) are allowed in India together with and public companies, limited or not, likewise with partnerships. Sole proprietorship too is allowed. However, the latter are reserved for NRIs.Joint ventures with trading companies are allowed together with imports of secondhand plants and machinery.

Under the country's laws, a public company must:

- Have at least seven shareholders
- Have at least three directors
- Obtain government approval for the appointment of its management.
- Have both a "trading certificate" and certificate of incorporation before commencing its business.
- Publish also a prospectus (or file a statement) before it can start transact business.
- Hold statutory meetings

There are several other provisions contained in the Companies Act 1956 which also need to be followed.

List of top 10 companies in India
Following listed are the top 10 companies in India:

Company	Industry
Bharti Airtel	Telecommunications Services
ICICI Bank	Banking
Indian Oil Corporation	Oil & Gas Operations
NTPC	Utilities
Oil & Natural Gas	Oil & Gas Operations
Reliance Communications	Telecommunications Services
Reliance Industries	Oil & Gas Operations
State Bank of India	Banking
Steel Authority of India	Materials
Tata Steel	Materials

Articles of Association
Introduction

The Articles of Association determine how a company is run. It is a set of 'bye-laws' which form the 'constitution' of the Company. It is often required by Law to be part of the Joint- Venture agreement. Some clauses relating to the following may be absent. Where this the case, it is assumed that the provisions as laid out in the in Company Law apply. The Articles can cover a medley of topics, mot all of which is required in a country's law. Although all will not be discussed, it can cover:

- Valuation of intellectual rights, say, the valuations of the IPR of one partner and,say,the real estate of the other
- The appointments of directors - which shows whether a shareholder dominates or shares equality.
- directors meetings - the quorum and percentage of vote
- management decisions - whether the board manages or a founder
- transferability of shares - assignment rights of the founders or other members of the company
- special voting rights of a Chairman, and mode of election
- dividend policy - percentage of profits to be declared when there is profit
- winding up - the conditions, notice to members
- confidentiality of know-how and founders' agreement and penalties for disclosure
- First right of refusal - purchase rights and counter-bid by a founder.

A Company is essentially run by the shareholders, but for convenience, and day-to-day working, by the Directors. The shareholders elect the directors at the Annual General Meeting (AGM), which is statutory. Thus, the Board of Directors (BOD).

Decisions are taken by a show of hands; The Chair is always present. Where decisions are made by a show of hands is challenged, it is done, by a count of votes. Voting can be taken in person or by marking the paper sent by the Company. A person who is not a shareholder of the Company can vote if he/she has the 'proxy', an authorization from the shareholder. Each share carries the votes assigned to it. Some votes maybe for the decision, others not. Two types of decision known as the Ordinary resolution and the other a special resolution can be tabled at a Director's Meeting:

DISOLUTION

The JV is not a permanent structure. It can be dissolved when:

- Aims of original venture met
- Aims of original venture not met
- Either or both parties develop new goals
- Either or both parties no longer agree with joint venture aims
- Time agreed for joint venture has expired
- Legal or financial issues
- Evolving market conditions mean that joint venture is no longer appropriate or relevant
- One party acquires the other

Partner selection

While the following offers some insight to the process of joining up with a committed partner to form a JV, it is often difficult to determine whether the commitments come from a known and distinguishable party or an intermediary. This is particularly so when the language barrier exists and one is unfamiliar with local customs, especially in approaches to government, often the deciding body for the formation of a JV or dispute settlement.

The ideal process of selecting a JV partner emerges from:

- screening of prospective partners
- short listing a set of prospective partners and some sort of ranking
- 'due diligence' – checking the credentials of the other party
- availability of appreciated or depreciated property contributed to the joint venture
- the most appropriate structure and invitation/bid
- foreign investor buying an interest in a local company

Companies are also called JVs in cases where there are dominant partners together with participation of the public. There may also be cases where the public shareholding is substantial but the founding partners retain their identity. These companies may be 'public' or 'private' companies. It would be out of place to describe them, except to say there are many in India.

The consortium JV (also known as a cooperative agreement) is formed where one party seeks technological expertise or technical service arrangements, franchise and brand use agreements, management contracts, rental agreements, for 'one-time' contracts,

FORMS OF JV'S

JVs may be either contractual or structural, or both. They may be broad based or narrowly defined and the main classification of JVs is as equity / corporate JV and contractual JV. An equity JV is an arrangement whereby a separate legal entity is created in accordance with the agreement of two or more parties.

JOINT VENTURES IN INDIA

Sony-Ericsson is a joint venture by the Japanese consumer electronics company Sony Corporation and the Swedish telecommunications company Ericsson to make mobile phones. The stated reason for this venture is to combine Sony's consumer electronics expertise with Ericsson's technological leadership in the communications sector. Both companies have stopped making their own mobile phones.

Virgin Mobile India Limited is a cellular telephone service provider company which is a joint venture between Tata Tele service and Richard Branson's Service Group. Currently, the company uses Tata's CDMA network to offer its services under the brand name Virgin Mobile, and it has also started GSM services in some states.

CONCLUSION

Joint Venture Companies are the most preferred module of corporate entities for doing business in India to achieve specific objectives of a partnership like temporary arrangement between two or more firms JVs are advantageous as a risk reducing mechanism in new-market penetration, and in pooling of resources for large projects. The companies incorporated in India, even up 100 % foreign equity, are at par at domestic companies. A Joint Venture may be any of the business modules available. There are no separate laws for Joint Venture in India. They, however, present unique problems in equity ownership, operational control, and distribution of profits (or losses).

Proposed name of JV keeping in view the present name / trade etc. of the joint venture partner.

- ➢ Selection of nominees / alternate directors on behalf of nonresident shareholders / directors.

REFERENCES

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