6. Joint Venture

6.1 Concept

A joint venture (JV) is a business agreement in which the parties agree 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.

In European law, the term 'joint-venture' (or joint undertaking) is an elusive legal concept, better defined under the rules of company law. In France, the term 'joint venture' is variously translated as 'association d'entreprises', 'entreprise conjointe', 'coentreprise' or 'entreprise commune'. But generally, the term societe anonyme loosely covers all foreign collaborations. In Germany, 'joint venture' is better represented as a 'combination of companies' (Konzern).

With individuals, 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 "co-venturers".

The venture can be for one specific project only - when the JV is referred to more correctly as a consortium (as the building of the Channel Tunnel) - or a continuing business relationship. 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. The JV is dissolved when that goal is reached.

Some major joint ventures include Dow Corning, MillerCoors, Sony Ericsson, Penske Truck Leasing, Norampac, and Owens-Corning.

A joint venture takes place when two parties come together to take on one project. In a joint venture, both parties are equally invested in the project in terms of money, time, and effort to build on the original concept. While joint ventures are generally small projects, major corporations also use this method in order to diversify. A joint venture can ensure the success of smaller projects for those that are just starting in the business world or for established corporations. Since the cost of starting new projects is generally high, a joint venture allows both parties to share the burden of the project, as well as the resulting profits.

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.

Preparation

Formulating the JV is a series of steps, which needs a lot of work and precision.[2] They are:

the objectives, structure and projected form of the joint venture, including the amount of investment and financing arrangements and debt

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.

Further consideration relates to starting a new legal entity ground up. Such an enterprise is sometimes called 'an incorporated JV', one 'packaged' with technology contracts (knowhow, patents, trademarks and copyright), technical services and assisted-supply arrangements.

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, e.g., for construction projects. They dissolve the JV when that goal is reached.

Company incorporation

A JV can be brought about in the following major ways:

Foreign investor buying an interest in a local company

Local firm acquiring an interest in an existing foreign firm

Both the foreign and local entrepreneurs jointly forming a new enterprise

Together with public capital and/or bank debt

In the U.K and India - and in many Common Law countries - a joint-venture (or else a company formed by a group of individuals) must file with the appropriate authority the Memorandum of Association. It is a statutory document which informs the outside public of its existence. It may be viewed by the public at the office in which it is filed. A sample can be seen at wikimedia.org. Together with the Articles of Association, it forms the 'constitution' of a company in these countries.

The Articles of Association regulate the interaction between shareholders and the directors of a company and can be a lengthy document of up to 700,000+ pages. It deals with the powers relegated by the stockholders to the Directors and those withheld by them, requiring the passing of ordinary resolutions, special resolutions and the holding of Extraordinary General Meetings to bring the Directors' decision to bear.

A Certificate of Incorporation or the Articles of Incorporation is a document required to form a corporation in the US (in actuality, the State where it is incorporated) and in countries following the practice. In the US, the 'constitution' is a single document. The Articles of Incorporation is again a regulation of the Directors by the stock-holders in a company.

By its formation the JV becomes a new entity with the implication:

that it is officially separate from its Founders, who might otherwise be giant corporations, even amongst the emerging countries

the JV can contract in its own name, acquire rights (such as the right to buy new companies), and

it has a separate liability from that of its founders, except for invested capital

it can sue (and be sued) in courts in defense or its pursuance of its objectives.

On the receipt of the Certificate of Incorporation a company can commence its business.

Shareholders' agreement

This is a legal area and is fraught with difficulty as the laws of countries differ, particularly on the enforceability of 'heads of' or shareholder agreements. For some legal reasons it may be called a Memorandum of Understanding. It is done in parallel with other activities in forming a JV. Though dealt with briefly for a shareholders' agreement,) some issues must be dealt with here as a preamble to the discussion that follows. There are also many issues which are not in the Articles when a company starts up or never ever present. Also, a JV may elect to stay as a JV alone in a 'quasi partnership' to avoid any nonessential disclosure to the government or the public.

Some of the issues in a shareholders' agreement are:

Valuation of intellectual rights, say, the valuations of the IPR of one partner and,say, the real estate of the other

the control of the Company either by the number of Directors or its "funding"

The number of directors and the rights of the founders to their appoint Directors which shows as to whether a shareholder dominates or shares equality.

management decisions - whether the board manages or a founder

transferability of shares - assignment rights of the founders to other members of the company

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.

There are many features which have to be incorporated into the Shareholders Agreement which is quite private to the parties as they start off. Normally, it requires no submission to any authority.

The other basic document which must be articulated is the Articles which is a published document and known to members.

This repeats the Shareholders Agreement as to the number of Directors each founder can appoint to the (see Board of Directors). Whether the Board controls or the Founders. The taking of decisions by simple majority (50%+1) of those present or a 51% or 75% majority with all Directors present (their alternates/proxy); the deployment of funds of the firm; extent of debt; the proportion of profit that can be declared as dividends; etc. Also significant is what will happen if the firm is dissolved; one of the partner dies. Also, the 'first right' of refusal if the firm is sold, sometimes its puts and calls.

Often the most successful JVs are those with 50:50 partnership with each party having the same number of Directors but rotating control over the firm, or rights to appoint the Chairperson and Vice-chair of the Company. Sometimes a party may give a separate trusted person to vote in its place proxy vote of the Founder at Board Meetings.

Recently, in a major case the Indian Supreme Court has held that Memorandums of Understanding (whose details are not in the Articles of Association) are "unconstitutional" giving more transparency to undertakings.

Chinese Law

It is interesting to study the joint-venture laws of China because they are of recent vintage and because such a unique law exists.

According to a report of the United Nations Conference on Trade and Development 2003, China was the recipient of US$53.5 billion in direct foreign investment, making it the world's largest recipient of direct foreign investment for the first time, to exceed the USA. Also, it approved the establishment of nearly 500,000 foreign-investment enterprises.The US had 45,000 projects (by 2004) with an in-place investment of over 48 billion.

Until recently, no guidelines existed on how foreign investment was to be handled due to the restrictive nature of China toward foreign investors. Following the death of Mao Zedong in 1976, initiatives in foreign trade began to be applied, and law applicable to foreign direct investment was made clear in 1979, while the first Sino-foreign equity venture took place in 2001. The corpus of the law has improved since then.

Companies with foreign partners can carry out manufacturing and sales operations in China and can sell through their own sales network. Foreign-Sino companies have export rights which are not available to wholly Chinese companies, as China desires to import foreign technology by encouraging JVs and the latest technologies.

Under Chinese law, foreign enterprises are divided into several basic categories. Of these, five will be described or mentioned here: three relate to industry and services and two as vehicles for foreign investment. Those 5 categories of Chinese foreign enterprises are: the Sino-Foreign Equity Joint Ventures (EJVs), Sino-Foreign Co-operative Joint Ventures (CJVs), Wholly Foreign-Owned Enterprises (WFOE), although they do not strictly belong to Joint Ventures, plus foreign investment companies limited by shares (FICLBS), and Investment Companies through Foreign Investors (ICFI). Each category is described below.

Equity joint ventures

The EJV Law is between a Chinese partner and a foreign company. It is incorporated in both Chinese (official) and in English (with equal validity), with limited liability. Prior to China's entry into WTO – and thus the WFOEs – EJVs predominated. In the EJV mode, the partners share profits, losses and risk in equal proportion to their respective contributions to the venture's registered capital. These escalate upwardly in the same proportion as the increase in registered capital.

The JV contract accompanied by the Articles of Association for the EJV are the two most fundamental legal documents of the project. The Articles mirror many of the provisions of the JV contract. In case of conflict the JV document has precedence These documents are prepared at the same time as the feasibility report. There are also the ancillary documents (termed "offsets" in the US) covering know-how and trademarks and supply-of-equipment agreements.

The minimum equity is prescribed for investment (truncated), where the foreign equity and debt levels are:

less than US$3 million, equity must constitute 70% of the investment;

between US$3 million and US$10 million, minimum equity must be US$2.1 million and at least 50% of the investment;

between US$10 million and US$30 million, minimum equity must be US$5 million and at least 40% of the investment;

more than US$30 million, minimum equity must be US$12 million and at least 1/3 of the investment.

There are also intermediary levels.

The foreign investment in the total project must be at least 25%. No minimum investment is set for the Chinese partner. The timing of investments must be mentioned in the Agreement and failure to invest in the indicated time, draws a penalty.

6.2 Cooperative joint ventures

Co-operative Joint Ventures (CJVs) are permitted under the Sino-Foreign Co-operative Joint Ventures. Co-operative enterprises are also called Contractual Operative Enterprises.

The CJVs may have a limited structure or unlimited – therefore, there are two versions. The limited-liability version is similar to the EJVs in status of permissions - the foreign investor provides the majority of funds and technology and the Chinese party provides land, buildings, equipment, etc. However, there are no minimum limits on the foreign partner which allows him to be a minority shareholder.

The other format of the CJV is similar to a partnership where the parties jointly incur unlimited liability for the debts of the enterprise with no separate legal person being created. In both the cases, the status of the formed enterprise is that of a legal Chinese person which can hire labor directly as, for example, a Chinese national contactor. The minimum of the capital is registered at various levels of investment.

Other differences from the EJV are to be noted:

A Co-operative JV does not have to be a legal entity.

The partners in a CJV are allowed to share profit on an agreed basis, not necessarily in proportion to capital contribution. This proportion also determines the control and the risks of the enterprise in the same proportion.

It may be possible to operate in a CJV in a restricted area

A CJV could allow negotiated levels of management and financial control, as well as methods of recourse associated with equipment leases and service contracts. In an EJV management control is through allocation of Board seats.

During the term of the venture, the foreign participant can recover his investment, provided the contract prescribes that and all fixed assets will become the property of the Chinese participant on termination of the JV.

Foreign partners can often obtain the desired level of control by negotiating management, voting, and staffing rights into a CJV's articles; since control does not have to be allocated according to equity stakes.

Convenience and flexibility are the characteristics of this type of investment. It is therefore easier to find co-operative partners and to reach an agreement.

With changes in the law, it becomes possible to merge with a Chinese company for a quick start. A foreign investor does not need to set up a new corporation in China. Instead, the investor uses the Chinese partner's business license, under a contractual arrangement. Under the CJV, however, the land stays in the possession of the Chinese partner.

There is another advantage: the percentage of the CJV owned by each partner can change throughout the JV's life, giving the option to the foreign investor, by holding higher equity, obtains a faster rate of return with the concurrent wish of the Chinese partner of a later larger role of maintaining long-term control.

The parties in any of the ventures, EJV, CJV or WFOE prepare a feasibility study outlined above. It is a non-binding document - the parties are still free to choose not to proceed with the project. The feasibility study must cover the fundamental technical and commercial aspects of the project, before the parties can proceed to formalize the necessary legal documentation. The study should contain details referred to earlier under Feasibility Study (submissions by the Chinese partner).

6.3 Wholly Foreign Owned Enterprises (WFOEs)

There is basic law of the PRC concerning enterprises with sole foreign investment controls, WFOEs. China's entry into the World Trade Organization (WTO) around 2001 has had profound effects on foreign investment. Not being a JV, they are considered here only in comparison or contrast.

To implement WTO commitments, China publishes from time to time updated versions of its 'Catalogs Investments' (affecting ventures) prohibited, restricted.

The WFOE is a Chinese legal person and has to obey all Chinese laws. As such, it is allowed to enter into contracts with appropriate government authorities to acquire land use rights, rent buildings, and receive utility services. In this it is more similar to a CJV than an EJV.

WFOEs are expected by PRC to use the most modern technologies and to export at least 50% of their production, with all of the investment is to be wholly provided by the foreign investor and the enterprise is within his total control.

WFOEs are typically limited liability enterprises (like with EJVs) but the liability of the Directors, Managers, Advisers, and Suppliers depends on the rules which govern the Departments or Ministries which control product liability, worker safety or environmental protection.

An advantage the WFOE enjoys over its alternates is enhanced protection of its know-how but a principal disadvantage is absence of an interested and influential Chinese party.

Foreign Investment Companies Limited By Shares (FICLBS)

These enterprises are formed under the Sino-Foreign Investment Act. The capital is composed of value of stock in exchange for the value of the property given to the enterprise. The liability of the shareholders, including debt, is equal to the amount of shares purchased by each partner.

The registered capital of the company the share of the paid-in capital. The minimum amount of the registered capital of the company should be RMB 30 million. These companies can be listed on the only two PRC Stock Exchanges – the Shanghai and Shenzhen Stock Exchanges. Shares of two types are permitted on these Exchanges – Types “A” and Type “B” shares.

Type A are only to be used by Chinese nationals and can be traded only in RMB. Type “B” shares are denominated in Remembi but can be traded in foreign exchange and by Chinese nationals having foreign exchange. Further, State enterprises which have been approved for corporatization can trade in Hong Kong in “H” share and in NYSE exchanges.

“A” shares are issued to and traded by Chinese nationals. They are issued and traded in Renminbi. “B” shares are denominated in Renminbi but are traded in foreign currency. From March 2001, in addition to foreign investors, Chinese nationals with foreign currency can also trade “B” shares.

6.4 Investment Companies by Foreign Investors (ICFI)

Investment Companies are those established in China by sole foreign-funded business or jointly with Chinese partners who engage in direct investment. It has to be incorporated as a company with limited liability.

The total amount of the investor's assets during the year preceding the application to do business in China has to be no less than US $ 400 million within the territory of China. The paid-in capital contribution has to exceed $ 10 million. Furthermore, more than 3 project proposals of the investor's intended investment projects must have been approved. The shares subscribed and held by foreign Investment Companies by Foreign Investors (ICFI) should be 25%. The investment firm can be established as an EJV.

Joint ventures in India

Introduction

India has an open philosophy on capital markets, and it closely parallels its English peers in operation. The Bombay Stock Exchange (BSE) has close to 5,000 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 contracts 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.

India does not restrict the repatriation of investments, dividends, profits and if need be, the principal, through the single autonomous entity, the Reserve Bank of India (RBI). The Indian currency (the rupee) is 100% convertible for earnings at free-market rates.

India's new policies (described below) have resulted in aggregate foreign investment flowing into India, increasing from US$103 million in 1990-91 to US$61.8 billion in 2007/2008.

Liberalization of policy

India's basic outlines of industrial development were framed by Pandit Jawaharlal Nehru in 1956, making the private sector a participant in development, but giving the public sector a dominant position.

However, by the early 1990s, the situation in the world economies turned: Japan entered a phase of stagnancy of growth, the pace of the "Asian tigers" slowed, as did the European economy. But, also, the country's balance of payments crisis.

To counteract these effects a new policy was born in July 1991, the reformed New Industrial Policy (NIP). It and later modifications (further liberalization) streamlines procedures, deregulated industrial licensing, and vastly expanded the role for the private sector, while shrinking the Public Sector. Also, anti-trust laws (the Monopoly and Restrictive Practices Act) were trimmed and customs duties for industrial goods slashed. The restrictive Foreign Exchange Regulation Act (FERA) was replaced by the Foreign Exchange Management Act (FEMA).

Industrial policy divided industry into three categories:

those that would be reserved for public-sector development,

those under private enterprise with or without State participation, and

those in which investment initiatives would ordinarily emanate from private entrepreneurs.

Only six industries are exclusively reserved for the public sector: trading (except single-brand retailing), agricultural or plantation activities, housing and real estate business (except development of townships), atomic energy, gambling or betting/lottery business, and retail construction of residential/commercial premises, roads or bridges are on the negative list for foreign participation.

Automatic licensing and administered licensing

India's investment policy, as of April 2010, is presented at the site. Briefly, India allows investments both through Foreign Direct Investment (FDI), meant for long-term controlling investments and Portfolio Investment – taking a position by buying shares of a company – which is likely short-term capital market operation. Foreign Institutional Investors (FIIs) from reputable institutions (like pension funds, mutual funds) may (and do) participate in the Indian capital markets.

Industrial approvals are automatic (RBI approval of investment) for most manufacturing industries with equity investment up to 51% foreign control and as of 1997 to 74% in certain select industries (See the current policy highlighted above). For another 36 sectors there are varying limits without output restrictions. RBI approvals come within two weeks for the invested entity. Investments can flow to the country prior to approvals for such cases. Even in sectors limited to 51%, a higher level of control, up to 74%, is feasible if approach is made to the Foreign Investment Promotiomn Board (FIPB) – thus, "administered" licensing. Investments up to 100% are allowed in power generation, coal washeries, electronics, an Export Oriented Unit (EOU) in the EPZ's.

NRI (Non-Resident Indians), PIO (People of Indian Origin), and OCBs (Overseas Commercial Bodies) have relaxed accommodation.

Industrial licensing of the 1951 policy is applicable to “Annex II” (not shown here) industries which revolve around certain key natural resources. It is administered through FIPB.

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.

Promoter shareholder of an existing Indian company and a third party, who/which may be individual/company, one of them non-resident or both residents, collaborate to jointly carry on the business of that company and its shares are taken by the said third party through payment 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 are allowed. However, the latter are reserved for NRIs.

Through capital market operations foreign companies can transact on the two exchanges without prior permission of RBI but they cannot own more than 10 percent equity in paid-up capital of Indian enterprises, while aggregate foreign institutional investment (FII) in an enterprise is capped at 24 percent.

The establishment of wholly owned subsidiaries (WOS) and project offices and branch offices, incorporated in India or not. Sometimes, it is understood, that branches are started to test the market and get its flavor. Equity transfer from residents to non-residents in mergers and acquisitions (M&A) is usually permitted under the automatic route. However, if the M&As are in sectors and activities requiring prior government permission (Appendix 1 of the Policy) then transfer can proceed only after permission.

Joint ventures with trading companies are allowed together with imports of secondhand plants and machinery.

It is expected that in a JV, the foreign partner supplies technical collaboration and the pricing includes the foreign exchange component, while the Indian partner makes available the factory or building site and locally made machinery and product parts. Many JVs are formed as public limited companies (LLCs) because of the advantages of limited liability.

JVs are expected in the nuclear industry following the NSG waivers for nuclear trade. The nuclear power industry has been witnessing several JVs. The country has set an imposing target of achieving an installed capacity of 20 GW by 2020 and 63 GW by 2030. The total size of the Indian nuclear power market will be around $40 billion by 2020 with a growth rate (AAGR) of 9.2% in installed nuclear capacity during 2008–20. The total investments made are to a tune of around $1.30 billion following the Indo-US nuclear deal in 2008.

There is a group of industries reserved for the small-scale sector wherein foreign investment cannot exceed 24%, and if does, then approval is necessary from the FIPB, and the unit loses its 'smallness' and requires an industrial license.

There are many JVs. lying outside of this discussion – Hindusthan Unilever-Unilever, Suziki-Govt. of India (Maruti Motors), Bharti Airteli-Singapore Telecom, ITC-Imperial Tobacco, P&G Home Products, Whirlpool, having financial participation with the financial institutions and the lay public which are monitored by SEBI (Securities and Exchange Board of India), also an autonomous body. This lies outside this discussion.

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.

6.4 Royalty payments and capitalization

For the automatic route, RBI allows:

Lump sum payments not exceeding US$2 million.

Royalty payable is limited to 5% for domestic sales and 8% for exports, without any restriction on the duration of the royalty payments. The royalty limits are net of taxes and are calculated according to standard conditions. Payments are made through RBI.

The royalty is calculated on the basis of the net ex-factory sale price of the product, exclusive of excise duties, minus the cost of the standard bought-out components and the landed cost of imported components, irrespective of the source of procurement, including ocean freight, insurance, custom duties, etc.

Issue of equity shares against lump sum fees and royalty fees is permitted.

For exceeding this norm, the firm has to approach FPBI.

India's legal system

India is a common law country with a written constitution, guaranteeing individual and property rights.

There is a single hierarchy of courts.

Arbitration can be in India or International Commercial Arbitration.

The country has recently enacted the Arbitration and Conciliation Act, 1996 ("New Law"). The New Law is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (Model Law).

All agreements are in accordance with Indian laws.

Articles of Association

The Articles of Association determine how a company is run. It is a set of 'by-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, almost 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.

Some agreements mention that the Articles of Association as given in Company Law apply to the agreement except where specifically differing; and others say, explicitly, that they do not bind that the agreement and that it contains all legally acceptable bye-laws. The typical Articles in an Indian Public Sector Company are given in.

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).

The number of directors depends on the size of the Company and statutory requirements. The Chairperson is generally a well-known outsider but he /she may be a working Executive, typical of an American enterprise. The Directors may or may not be employees of the Company.

There are usually some major shareholders who form the company. Each usually has the right to nominate, without objection of the other, certain number of directors who become nominees for the election by the shareholder body at the AGM. The Treasurer and Chairperson is usually the privilege of one of the JV partners (which nomination can be shared). Shareholders can also elect Independent directors - persons not associated with the promoters of the company. Person is generally a well-known outsider but he /she may be a working Executive. The Directors may or may not be employees.

Once elected, the BOD manages the Company. The shareholders play no part till the next AGM. or EGM. The Objectives and the purpose of the Company are determined in advance by the shareholders and the Memorandum of Association (MOA) - which denotes the name of the Company, its Head- Office, its Directors and the main purposes of the Company - for public access. It cannot be changed except at an AGM or Extraordinary General Meeting (EGM) and statutory allowance. The MOA is generally filed with a 'Registrar of Companies' who is an appointee of the Government. For their assurance the shareholders, an Auditor is elected at each AGM. The MOA is currently dispensed with in many countries.

The Board meets several times each year. At each meeting there is an 'agenda' before it. A minimum number of Directors (a quorum) is required to meet. This is either determined by the 'bye-laws' or is statutory. It is Presided by the Chairperson or in his absence, by the Vice-Chair. The Directors survey their area of responsibility. They may determine to make a 'Resolution' at the next AGM or if it is an urgent matter, at an EGM. The Directors who are the electives of one major shareholder, may present his/her view but this is not necessarily so - they may have to view the Objectives of the Company and competitive position. The Chair may have to 'break' the vote if there is a 'tie'. At the AGM, the various Resolutions are put to vote.

The AGM is called with a notice sent to all shareholders. A certain quorum of shareholders are required to meet. If the quorum requirement is not met, it is canceled and another Meeting called. If it at that too a quorum is not met, a Third Meeting is called and the members present, unlimited by the quorum, take all decisions.

Decisions are taken by a show of hands; the Chair is always present. When a decision 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. The Ordinary Resolution requires the endorsement by a majority vote, sometimes easily met by partners' vote. The special resolution requires 60%, 70% or 80% of the vote as stipulated by the 'constitution' or the very same bylaws of the Company. Shareholders other than partners are required to vote. The matters which require the Ordinary and special resolution to be passed are enumerated. A typical Articles of Association is shown in the Nestle S.A. or Nestle Ltd.

Dissolution

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.