

India - Establishing JVs

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Introduction

Topics:

- Why consider joint ventures in India including associated benefits
- The challenges to consider
- How to go about establishing a joint venture including the differing structures they can take, choosing the right partner, the process and documentation involved
- Ending a joint venture



What Do You Want Do?

Have a 'range' of ideas of what you want to achieve:

- Sales
- Sourcing / Production
- Technology transfer / IP

Have you tested the proposition?

- Market testing
- Know-How adapted for the local market?
- Production - quality & delivery





Entry Dynamics: Understand The Parameters

Who are you primarily working with?

- Government sector
- Private sector

On what Terms?

- Timeframes
- Risk
- Reward
- Managing expectations



Arms length from the UK

Go-it alone in India

- Legally are you allowed to?
- Should you, even if legally you can?

Via JV:

- What do you need from a JV partner?
- How do you select partner?
- What terms?



Each route has its pros and cons



Observations

Many foreign companies have entered India over the past decade:

- Many are multi-national companies
- Small companies still face challenges of entering India

JVs

- In the early days, JVs were a popular market entry route – necessary because of Government controls
- Today a JV is not a legal necessity for most sectors, with 100% foreign ownership allowed – this is ok for experienced companies
- For smaller companies, constrained by resources, a JV is still an important route, but comes with its own challenges

Today many large and medium companies enter India without a JV



Joint Ventures

What is a JV?

- Where two or more parties come together to form a legal entity with a specific aim(s)
- Each party would contribute something – money / know how (product) / customers / skills etc

Why go for a JV?

- Legally requirements - although it is necessary in only a few sectors, such as retail
- Or a local invested partner is needed to make the project work



Practical

- Fix day to day problems eg company formation / buying assets / hiring labour / opening bank accounts
- Deal with the authorities – state and national
- Speed things up

Financial

- Sharing risks but also the rewards



Risks

- Fail to deliver – thus major problems to exit



JV Structures

Many Possibilities

- Who are the legal owners of the JV and where are they domiciled?
- % shareholding and voting rights
- How is money taken out of the business?
- Transfer pricing between partner companies – implications on profits / taxes
- Liabilities – what is the exposure to whom?

Recommend

- Seek the advice of lawyers and accountants familiar with India and make sure they understand the particular rules concerning the state the JV will be set up in



Partner Search

How to find a partner?

- Choose someone you know, that you have worked with over time in India. If you don't have someone, then seek referrals
 - Make some enquiries / test them out before committing
- Crucial to have someone you trust*

JV Agreement

- Make sure any JV agreement is fair to both parties
- Think of the various scenarios that may occur
- Arbitration Clauses / Jurisdiction
- Have defined exit options

Ambiguity = many years in the courts!



JV Challenges

Be Prepared:

- Lengthy negotiations, followed by mass documentation – make sure not contradictory
 - Manage the expectations of your business partners
 - Invest time in building the business relationship – it take two to tango!
 - Work as a team from the beginning, otherwise it is doomed
- Still allow double the time for the business to deliver results*

Shared History / Language?

- Beware of falling into trap that everyone understands each other!
- The inability of Indians to say 'NO', but then things might not happen!

Plan in Advance

- Well before reaching the exit point, make sure that all actions are taken to remedy the problems
- Check with in advance with local lawyers and authorities to identify possible areas of problems
- When reaching critical points, make sure a written legal plan with the partner is agreed, with the obligations clearly stated
- When ending the JV, ensure that all the obligations are carried out such as laying off labour; paying outstanding liabilities etc

This is going to be painful and expensive





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