Indian Joint Ventures – Key Issues

1. GETTING STARTED

Setting up legal entities is a cumbersome and time-consuming process in India; especially for foreign investors. Commencement of business activities could be delayed considerably if not managed properly.

Tip: Plan your schedules and timelines with the extended process in mind.

2. LICENSES AND PERMITS

India has a federal system of governance, with separate (but not contradictory) legislations at the central and state levels. This further complicates an already lengthy process. In the absence of a single window approval process, clearances are needed from multiple authorities.

Tip: Meticulous planning and dedicated (in house or third party) resources are needed, specifically for permits.

3. GRAFT AND CORRUPTION

Due to tedious regualtory processes and associated redtapism, corruption and bribery are factors you might often face while dealing with officials. Lack of transparency sometimes leads to increase in cost and project delays.

Tip: Continuous follow-ups and a strict in-house anti-corruption policy could help.

4. CULTURAL DIFFERENCES

India is multi-cultural and diverse in its language, customs and habit, confusing those who are not familiar with it. This may lead to miscommunication and conflict between JV partners if they are unable to get past their cultural differences.

Tip: Familiarise yourself with the local customs and traditions before setting off on a joint venture.

5. MANAGEMENT

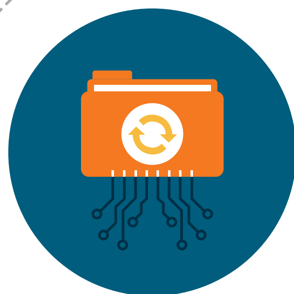
In small and mid-sized JVs, corporate compliance and informed decision making is often lacking. For example, extracts of board resolutions are signed without the necessary discussions and deliberations on key issues. This leads to over-dependence by one partner on the other. In case of a dispute, this often works against the foreign partner.

Tip: Both the partners must be closely involved with the operations and management of the company.

6. FINANCING

The procedure for foreign investors to fund and invest in an Indian JV company is complicated and can be slow-moving. Inter corporate deposits and borrowings by an Indian company from its foreign parent are highly regulated. Partners may not have the financial ability to make capital contributions, leading to disputes on ownership interest.

Tip: Business plans must consider future funding requirements. Both partners must conduct a comprehensive due diligence on the solvency and credit-worthiness of each other.



7. TECH TRANSFER

If the ownership of technology and associated usage rights are not clearly detailed in an agreement, technology transfer and violation of the initial understanding on such rights could become critical issues later on.

Tip: Robust agreements and IP policy need to be put in place to prevent future conflicts.

8. LAND

Real estate in India is valued very highly. Often, the Indian partner brings in this precious asset and foreign partners fail to recognize its value. In case of termination of the JV, if land is integral to the business but does not transfer with the business, costs can rise to unforeseen levels.

Tip: Ideally, the JV company must either own the land or be entitled to occupy and use it, irrespective of the relationship between the partners.

9. TAX REGIME

There are a plethora of tax laws in India. Further, these laws are regularly re-assessed and amended, making for an uncertain tax climate. This uncertainty, in spite of the growing economy, makes some investors cautious and wary of committing to more business in the country.

Tip: The investment structure must be carefully thought through, keeping in mind draft policies as well as ongoing discussions in the country.

10. DISPUTE RESOLUTION

Because of the regulatory framework, litigation in India is an arduous, long-drawn and expensive affair.

Tip: Dispute resolution mechanism should be preferably situated outside India.

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