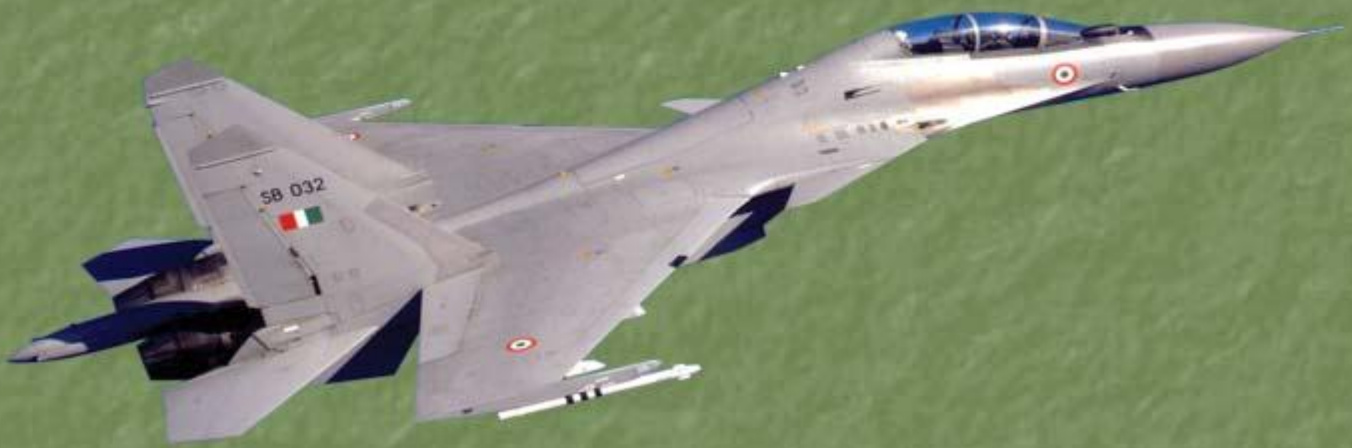
# Seminar on FDI, JVs & ODI
by

SIRC, Bangalore chapter




## PRESENTATION ON JOINT VENTURES

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# Presentation covers

- Assess the need for JVC
- Reasons to form a JVC
- Methodology of selection of partner
- Process of negotiations
- Important steps / factors to be considered
- FDI guidelines – Defence sector
- ODI guidelines
- Formation of JVCs
- Important contents of SHA
- Business plan
- Working of JVC - CS perspective
- Risks of Joint Venture
- Suggestions
- Win-win situation

# Forming Joint Ventures through

- Strategic Alliance (without creating a new entity)
- Creation of New Entity (JVC)

# Types of Strategic Alliance

- Joint Working Group
- Co-development & Co-production Agreement
- Co-production Agreement
- Transfer of Technology / Collaboration Agreement

# Assess the need for JVC

**Can the new business be carried out within the existing set up or a new JVC will be beneficial?**

| Pros | Cons |
|---|---|
| Focused approach on new business | |
| ➢ Risk Sharing | ➢Cost of managing a new company |
| ➢ Conservation of Managerial & Financial Resources | ➢Legal Compliances |
| ➢ Work in more free environment (level playing field) | ➢Losing control / ownership including IP |
| ➢ Preference of JV Partner | ➢Reduction in scale of operation |
| ➢ Vendor Development | |
| ➢ Creating spare capacity | |

# JOINT VENTURE COMPANY (JVC)

**Creation of new JVC where:**

- Two or more parties (company or individual) incorporate a new company to start new business activity.
- Two parties incorporate a new company and business of one (both) company (ies) is transferred to new company
- Shares of an existing company are allotted to another company / individual

# Reasons to form a JVC

**Combining complementary R & D technologies**

**Efficient commercialization of a technology or business concept**


**Developing or acquiring marketing or distribution expertise**

**Sharing of professionals with unique skills**

**Financial support or sharing of economic risk**

**Overcome barrier to enter market**

# Reasons to form a JV

**Acceleration of revenue growth**


**Ability to increase profit margins**

**Enter new / international market**


**New product development**

**Block / Reduce Competition**

# Internal Procedures

## Methodology of Selection of Partner

1
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- Due diligence – Finance, Commercial and Legal

2

- Competitive Bidding for JVC Partners

3

- Presentation to the Company by the probable partners on various parameters

4

- Previous dealing / History / Status in the Market

# Process of Negotiations

Form a core group representing technical/finance/legal/commercial with a leader

Setting Objectives

Internal deliberation to identify Key Issues/Parameters

Develop your own draft Contract /Agreement

Collect data and information including business intelligence reports

Develop Systematic Record of Negotiations by recording the key decisions

# Important steps / factors to be considered

## After Selection of Most suitable Partner

- Sign MOU & NDA containing broad understanding with the selected partner along with a preliminary Business Plan
- FDI / ODI guidelines
- Jointly develop:
  - Business Plan
  - Shareholders Agreement (SHA)
  - MOA and AOA (in line with the SHA)
  - Other ancillary agreements

# FDI Guidelines

**Ensure compliance of (sector-wise) FDI Guideline**

**Defence Sector**

- 26% by Foreign Partner
- **One of the Indian Partners should hold 51% or more**
- CEO to be Indian Citizen
- **FIPB Approval**
- Industrial License from DIPP and MOD

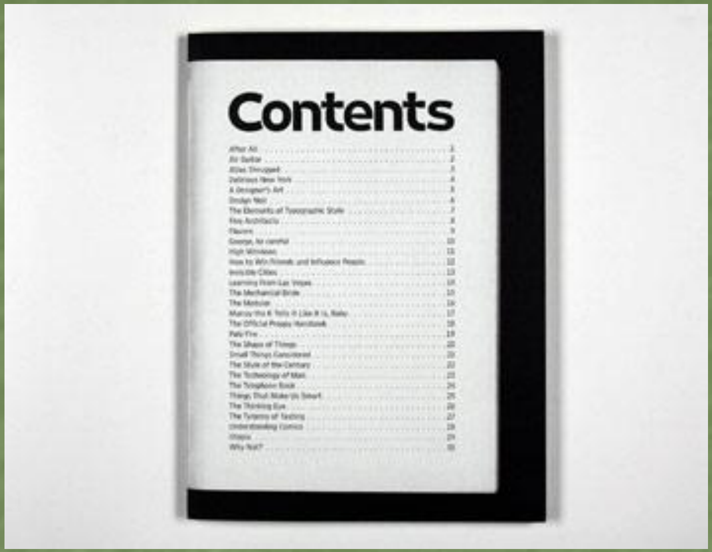
# ODI Guidelines

- Prior approval of RBI for investment in
  - Real Estate
  - Banking
- General permission has been granted to persons residents in India for purchase / acquisition of securities in the following manner
  - out of funds held in Resident Foreign Currency account;
  - as bonus shares on existing holding of foreign currency shares;
  - when not permanently resident in India, out of their foreign currency resources outside India.
- Upto 400% of Net Worth under Automatic Approval
- No limit if it is from Exchange Earners Foreign Currency Account

# Formation of JVCs

- After selection of partner, sign MOU & NDA --- -- along with a preliminary Business Plan
- Board's in-principle approval to go ahead
- Board's approval for formation of JVC, Investment, SHA & Business Plan ---
- Signing of SHA, Business Plan & Ancillary Agreements ---
- Take steps for formation of JVC

# Important Contents of SHA




- Objective
- Definitions
- Conditions Precedent
- Investments
- Management
- Meetings of Board and Shareholders
- Quorum requirement
- Affirmative Vote
- Lock in Period
- Transfer procedures

# Important Contents of SHA

- Confidentiality
- Intellectual Property Rights
- Term and Termination
- Deadlock Situation
- Governing Law and Dispute Resolution
- Exit Strategy including Right of first refusal
- Representations and Warranties
- Indemnity
- Non-compete clause

# Business Plan

- To define core activities of the JVC
- Assumptions
- Investments – Debt Equity Ratio
- SWOT analysis
- Sales Projection
- Profitability
- Cash Flow
- Pay Back Period
- Break- Even Analysis
- Manpower Plan

# Working of JVC - CS perspective

- Quorum for Board and General Meetings
- Voting Rights / Decisions
- Areas / Decisions requiring affirmative vote
- Playing neutral role
- Legal Compliance
- Lay sound foundation for good governance

# Risks of Joint Venture

Partnering with another business can be complex.
It takes time and effort to build the right relationship.

**Problems are likely to arise if:**

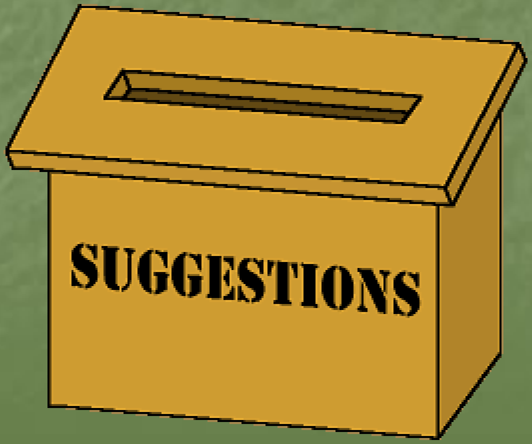
- The partners have different expectation / objectives for the joint venture
- There is an imbalance in levels of expertise, investment or assets brought into the venture by the different partners
- Different cultures and management styles result in poor integration and co- operation
- The partners don't provide sufficient leadership and support in the early stages
- Inadequate planning for the joint venture

# Risks of Joint Venture


- **Problems are likely to arise if:**
  - **The hoped-for technology never develops**
  - **Agreements not reached on alternative approaches to achieve basic objectives of JV**
  - **People with expertise in one company refuse to share knowledge with their counterparts in the joint venture**
  - **Parent companies are unable to share concern or compromise on difficult issues**

# Suggestions

- Utmost care in selecting a JV Partner
- Role and Responsibilities of Partners to be defined + Relationship of JVC with partners
- Policy on JVC at the stage of formation
- Unbiased management of JVC
- More Stringent Quorum for meeting
- Mechanism to resolve differences / deadlock
- Exit Strategy + Lock in period

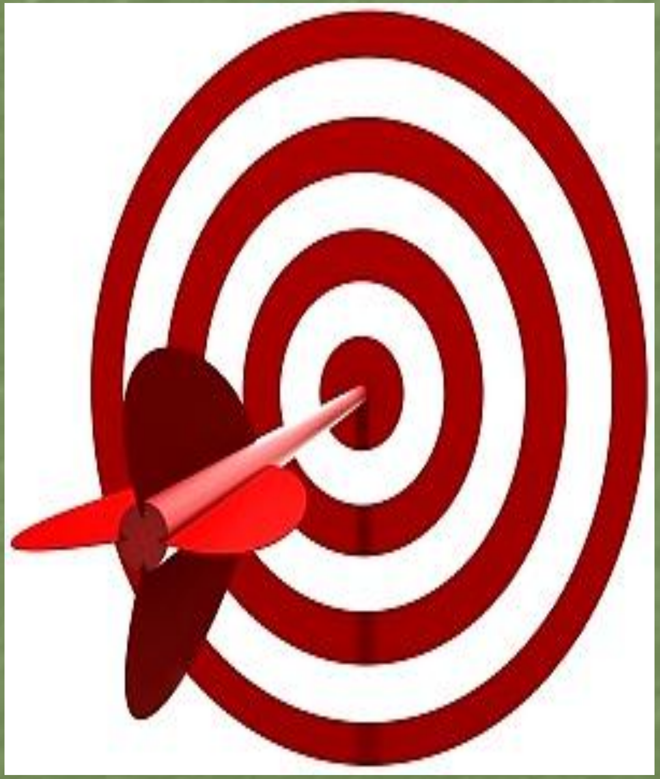


# Win-Win Situation for stakeholders

Success in a joint venture depends on thorough research and analysis of aims and objectives.

This should be followed up with effective communication of the business plan to everyone involved.

Dynamic system to review/ maintain continuity and growth



# THANK YOU