Guide on Comparison of Joint Venture Laws of India with UAE and Singapore

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For a long time, one of the main fields of concern for economists all over the world has been the industry. With money on the line, people are always looking for new ways to increase income; whether it's a street-side sole proprietor with a lakh in capital or multibillion-dollar corporations, business is almost always profit-driven. In this age, as it is becoming increasingly difficult to survive the market's fierce competition on one's own, two or more people motivated by a shared purpose often band together to realize their true potential. A joint venture is a term used to describe a planned operation like this.

A joint venture initiative is a business agreement in which two or more parties agree to pool their resources in order to complete a particular mission, which is usually related to business. The parties form a symbiotic relationship that helps both of them as a result of their coming together. One may have financial resources, while the other has technical expertise. Individually, they will never be able to achieve their goals, but in a healthy partnership, using each other's skills, joint-ventures often achieve their objectives.

Joint venture Laws in the United Arab Emirates

Joint ventures are used by many foreign investors to penetrate the Middle East market (JVs). The reasons for this range from an international investor's willingness to partner with an entity/individual who understands the local/regional market to foreign ownership restrictions in some Middle Eastern jurisdictions, which require that a local company's shareholding involve a local/national shareholder.

Structure of the Joint venture:

One of the most important considerations to make when deciding on the structure of a JV is whether the parties will operate it by mutual agreement or whether they will jointly own and form a separate legal entity, usually in proportion to the contribution each is making (i.e., through a joint venture company (JVC)).

The essence of the JV and the parties' intentions also decide whether a contractual agreement or a JVC (usually a limited liability company) is the most suitable structure.

Contractual contracts, on the one hand, and JVCs, on the other, all have advantages and disadvantages. The key benefit of a contractual JV agreement is that it can be customized to a single project and wound up reasonably easily after that project is completed. This may be attractive to prospective foreign entrants to a jurisdiction, who may be entering the market to tender for a particular project and do not want to be bound to a company's ongoing costs (e.g., annual registration fees). Similarly, forming a JVC allows JV partners to have limited liability and to pass any shareholder's interest in a much more structured way than is always possible with a contractual JV

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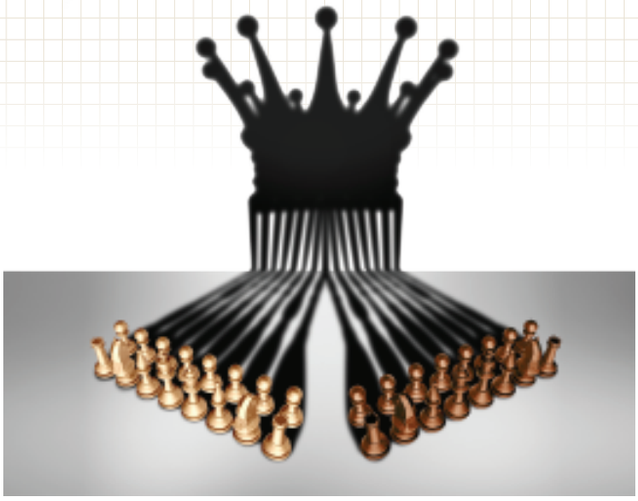

"One doesn't have to be a large corporation to benefit from the advantages of volume. This can also be achieved through joint ventures."
- Norbert Reithofer

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Share ownership restrictions:

Many Middle Eastern countries have limits on who can buy company shares. In the United Arab Emirates (UAE), for example, a company must be owned by UAE nationals at least 51 percent of the time. As a result, any foreign investor entering into a corporate JV in the Middle East should be aware of any such constraints.

In order to acquire a controlling shareholding in a JVC in the UAE, many foreign investors have entered/set up in one of the economic free zones (where a business can theoretically be 100 percent owned by a foreign person/entity). Setting up shop in a Free Zone, on the other hand, has its drawbacks, not least the fact that the JVC is only permitted and allowed to operate inside the Free Zone in which it is incorporated, not in the rest of the UAE, other Free Zones, or other Middle Eastern jurisdictions.

The press regularly reports that authorities in a number of Middle Eastern countries (including the United Arab Emirates and Saudi Arabia) are considering loosening foreign ownership restrictions in order to keep the region appealing to foreign investors (particularly in light of an era of global economic uncertainty and low crude oil prices). If this happens, it will certainly boost foreign parties' negotiating position in JV agreements.

The investment's nature:

The type of capital investment made by the parties to a JV can have an effect on the timing and ease with which a JVC can be established in the Middle East. Typically, parties must choose between injecting funds through capital (i.e., purchasing shares) or shareholder loans. In our experience, JVCs in the Middle East are typically undercapitalized, and potential capital injections are often made by shareholder loans. In other parts of the world, the essence of the shareholder capital contribution is influenced by tax considerations and investment implications. In practice, it is easier to invest in the Middle East through loans rather than shares, not least because raising a local company's share capital can be a lengthy process that sometimes requires the parties to schedule meetings with notaries to amend constitutional documents. Furthermore, when a JVC requires a rapid injection of cash, such as when it is in financial distress, injecting money through loans is faster and more efficient than increasing a JVC's share capital, which can take months.

In the Middle East, parties to a JV often contribute a facility, intellectual property, or a specialist asset (particularly those in the technology, media, and telecommunications industries). When the JV is wound up, the contributing shareholder may want to ensure that the asset is solely retained/returned to them. Exit-mechanism clauses guarantee that the asset is always returned to the contributing shareholder, but the price paid for that asset is dictated by the circumstances that contributed to the exit (For example, if a contributing shareholder breaches its JV agreement obligations, it will be penalized by having to pay a premium for the asset that will be returned to it).

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"Businesses once grew by one of two ways; grass roots up, or by acquisition... Today businesses grow through alliances - all kinds of dangerous alliances. Joint ventures and customer partnerings which, by the way, very few people understand."

– Peter Drucker

Governance and management structure:

The governance and management structure of a JV is largely determined by its structure (i.e., whether it is contractual or a JVC). A JVC's management is also governed by a board of directors, who have ultimate legal responsibility for the company. The parties' agreement on the appointment/removal of the JV's main management team, such as the CEO and CFO, is also spelt out in the JV agreement.

Certain matters can be reserved for consideration by the parties in the JV agreement, regardless of nature/size/-composition of the JVC's management team and board of directors. It is important for parties to understand which matters and privileges that can only be performed with the approval of shareholder by law in the relevant jurisdiction in order to avoid lengthy negotiations between the parties on what would constitute the list of reserved matters that need shareholder approval (Changing the company's constitution or winding it up, for example).

Exit Provisions:

Exit clauses in JVC agreements are often lengthy and complex, and they deal with the situation where one party wishes to leave the JVC and sell their interest to a third party. The other JV partner(s) will typically have a right of pre-emption, which allows them to buy the selling shareholders' shares before they are sold to a third party. In contractual JVs, the parties usually agree on the duration of the JV upfront or have a clause in the contract that allows any party to cancel the contract with 30 days' notice.

While drag-along and tag-along clauses are common in Middle Eastern JVC agreements, there is concern that they are difficult to enforce and may not be recognized by local courts. Share transactions in many Middle Eastern jurisdictions (for example, onshore UAE and Saudi Arabia) typically, all the shareholders must appear in front of a notary public to register the transfer. Similarly, persuading a notary public to recognize a power of attorney found in a JV agreement in order to implement a clause of the agreement may be challenging.

Joint venture laws in India

A joint venture law can be described as an arrangement between a group of people (natural or legal entities) to do business together or to undertake a specific project while retaining their separate corporate structures.

A joint venture not only eliminates the risks associated with joining a new business sector but also decreases the costs. A joint venture opens potential market opportunities and offers new learning experiences for the involved business entities by enabling entry into a foreign jurisdiction, which is particularly beneficial in developing countries like India.

There are no specific laws or principles in India that regulate the establishment, operation, and termination of joint ventures. However, the agreements that will govern an Indian joint venture should be read in compliance with current Indian general principles and laws, as well as certain technology transfer conditions imposed by Indian law. It may also be appropriate to obtain government approvals.

Joint ventures laws in Singapore

Singapore is a vibrant business environment that encourages the formation of new joint ventures and alternative business structures in order to facilitate trade and commerce. The following are a few notable JV transactions that have received a lot of regulatory scrutinizes.

SATS, a provider of in-flight catering services, is launching a new travel retail joint venture at the same time as establishing a new food supply joint venture with Wilmar International.Yihai Kerry Investments, a subsidiary of Wilmar International, has signed two conditional joint venture agreements (JVAs) with Singapore Food Industries (SFI) to supply food to the Chinese industry.

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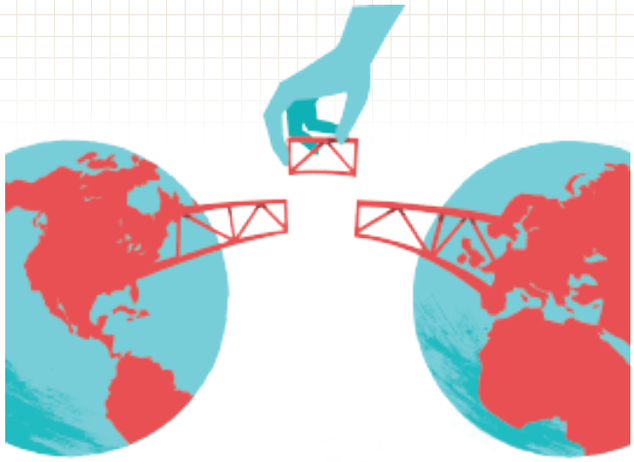

"We must take the current when it serves, or lose our ventures."
- William Shakespeare

SFI is a subsidiary of SATS, a Singapore-based ground-handling and in-flight catering service, provider. SATS had previously formed a joint venture with a multinational food conglomerate. Together, these JVs have given the dynamic F&B industry international visibility, capital infusion, know-how, and versatility, reducing outsourcing requirements in the long run.

Singapore Airlines and Lufthansa have partnered to offer Singapore Airlines passengers access to and from Austria, Belgium, Germany, and Switzerland via Frankfurt, Munich, and Zurich. On Singapore Airlines and Silk Air flights to Southeast Asia and the Southwest Pacific, Lufthansa and SWISS will codeshare. The codeshare arrangement between the carriers is likely to be extended to include more destinations.

Control and foreign ownership in Singapore:

The foregoing examples show how the Singapore economy is based on advancing its current business interests and breaking through barriers wherever possible. The amount of foreign ownership of Singapore companies or enterprises is usually unrestricted (whether listed or unlisted). Only a few business markets have restrictions on foreign ownership. For example, foreigners are barred from owning certain forms of residential property (detached houses, semidetached houses, and terrace houses are examples of landed property), and foreign ownership of a broadcasting company is restricted to 49 percent. With 24 trading partners, Singapore has signed several bilateral investment treaties and bilateral Free Trade Agreements (FTAs), which have helped in the relaxing of investment laws. The 2008 China-Singapore Free Trade Agreement, the 2005 India-Singapore Comprehensive Economic Cooperation Agreement (CECA), the 2003 Singapore-Australia Free Trade Agreement (which was reviewed in 2011), the 2003 US-Singapore Free Trade Agreement (USSFTA), and the 2002 Japan-Singapore Agreement for a New-Age Economic Partnership Agreement are all bilateral FTAs.

On the contrary, there are many difficulties that businesses face when introducing JVs because they lack a vital component of any alliance or JV effort: launch preparation and execution. Despite the fact that most businesses are very disciplined when it comes to integrating acquisitions, they seldom devote enough time to forming similar-sized joint ventures or alliances. Mistakes made during the launch process can wipe out up to half of a venture's future value development. The signing of a memorandum of understanding and continuing for the first 100 days of service are normally not closely handled enough when the JV is launched. This lack of emphasis may lead to strategic disputes between allied firms, governance gridlock, and organizational synergies that are overlooked.

Comparison of the joint venture laws

The Indian market is vast and varied. It offers market producers a wide range of options from which to choose and choose other producers with whom they want to form a joint venture. In the Indian market, the reach of a JV agreement with a foreign investor is restricted, particularly now that strict reforms to the Foreign Direct Investment policy have been implemented. The United Arab Emirates, on the other hand, adds a unique viewpoint to this situation.

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"We believe in the vision of 'Make in India,' and our proposed joint venture with Rafael is a step in this direction."

- Baba Kalyani

International and local joint ventures can be established more easily in the UAE due to its political stability, advanced infrastructure, investment-friendly policies, and a competitive free market. Not only does this area have a lot of room for expansion, but it also has everything you need for a long-term joint venture.

A joint venture, like any other company, has a set of objectives. They want to set a simple target in front of them and then work hard to achieve it. They have full power over the direction they want to take. Both India and the UAE have the same policy in this regard. It is up to the parties to determine if they want their company to be simply a contractual obligation that will cease to exist the day their goal is reached or whether they want to create a new legal entity to ensure business continuity. There are advantages and disadvantages in both cases. In this respect, the main benefit of a contractual arrangement is that it can be quickly terminated and is ideal for those who only want to achieve a purpose, while the formation of a new legal entity attracts those who want a long-term partnership. The two countries have identical policies in each of these situations.

Foreign companies may benefit from joint ventures in India to a large extent, particularly in sectors where 100 percent FDI is not permitted. However, there are several limits on share ownership in the United Arab Emirates. A business in that country must be owned by UAE nationals at least 51 percent of the time. In the UAE, there are a few free zones where a foreign company can own 100 per cent of the company, but they come with a lot of restrictions.

Another point of distinction between the two countries is the capital introduction. When it comes to joint ventures, the majority of the capital generated in India is in the form of share capital. However, in the United Arab Emirates, this is done differently. People in this area are more likely to lend money for a joint venture's capital. In addition, when immediate funding is needed, a loan appears to be a safer choice than raising funds through share capital in desperate times.

Since a joint venture is a business venture, the agreement governing it must be flawless so that neither party is confused and later conflicts can be avoided. Joint venture agreements should include a few simple points that are common to both India and the UAE in this regard. This includes the proposed arrangement, the parties and their locations, the contribution, delivery, management say, privileges, and responsibilities, among others.

In the event of a dispute over the venture, the parties are free to choose which form of dispute resolution they prefer. There are, however, certain requirements that must be met. If all parties to a dispute are Indians, the dispute must be settled according to Indian law. In terms of the Indian courts, they will go ahead to execute the contract's jurisdiction clauses. In terms of international jurisdiction, Indian courts may be unable to relinquish jurisdiction on the basis of convenience in certain cases. Parties in the UAE have the same right to choose the rule they want to be governed by. Any corporate joint venture, however, will be subject to the applicable regulatory requirements for UAE firms. The UAE courts, on the other hand, have consistently shown a reluctance to impose any international judgment that contradicts UAE company law provisions.

In terms of the joint venture scenario in India and the UAE, that was the overall image of comparison and contrast. Now we'll look at some of the core provisions of the Singapore Joint Ventures. Singapore has emerged as a thriving business hotspot in recent years, especially encouraging new joint ventures. Catering facilities onboard SATS is establishing a new joint venture in the food supply industry with Wilmar International, showing Singapore's flourishing market climate.

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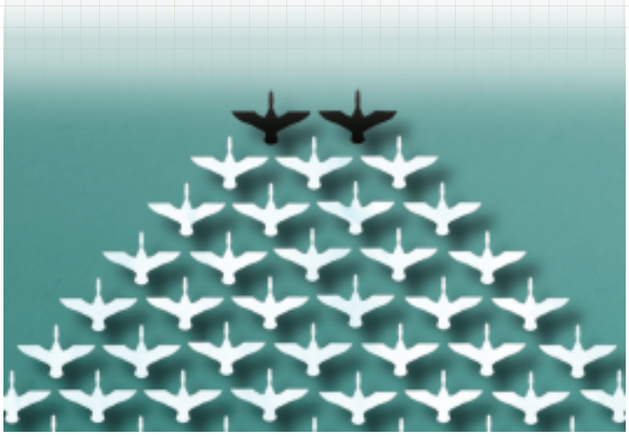

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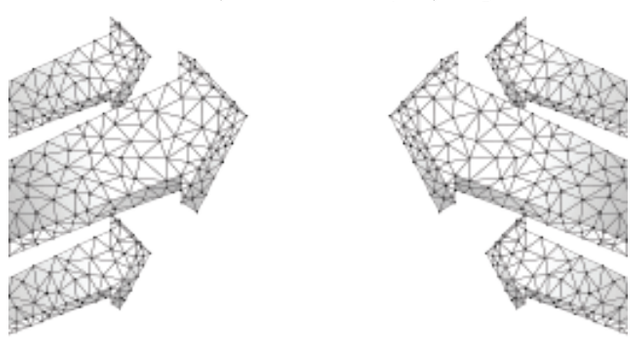
The first point worth noting is Singapore's foreign investment strategy in terms of joint ventures. Singapore, unlike India and the United Arab Emirates, has few constraints on the amount of foreign investment that can be made (listed or unlisted). In this regard, only a few industries are regulated. When it comes to ventures that have been given a separate legal identity, there are some differences between India and Singapore in terms of minority rights. It has expressed itself in the form of special shareholder resolutions, which involve a 75 per cent vote rather than a simple majority for particular corporate acts such as modifying the company's constitution. Other types of minority stakeholder rights include an injustice remedy and the court's ability to order a company's winding up on just and equal grounds.

Anti-competitive deals, violations of a dominant market position, and mergers that reduce market competition are all prohibited under the country's competition law. The *Companies Act, Contract Law,* and *Tax Law,* among other rules, control joint ventures in Singapore. Unlike India, there is no single law that governs Ventures; instead, they are regulated by a variety of rules. It's worth noting that there are no general conditions under Singapore law for filing the required joint venture formation documents with any competent authority.

Even if a joint venture is not listed as a merger under section 54 of the *Companies Act,* anti-competitive deals are still prohibited under section 34 of the *Act*. In simple terms, the market's competitiveness is diminished. If the Joint Venture is structured as a contract, the parties are free to choose the rule to which they wish to be bound. JVs established under a statutory provision, on the other hand, would be bound by the rules of that law. The Accounting and Corporate Regulatory Authority (ACRA) and the Singapore Competition Commission are the two major authorities that prosecute joint venture activities in Singapore (CCS).

We can see how useful joint venture laws are in different parts of the world. Various governments around the world provide incentives to citizens who want their country to participate in the global economy and, as a result, make it easier to form and operate joint ventures. It's a really convenient way of doing business because it leaves the ball in the hands of the co-venturers, who can choose which direction they want the company to go.



"Intellectual Ventures is a company that invests in invention."

- Nathan Myhrvold

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