Speaking on Joint ventures in Dubai Real Estate

Mr. Thacker discusses joint venture opportunities in the real estate sector in Dubai and the United Arab Emirates. This feature covers detailed advice for domestic as well as foreign property developers interested in exploring joint venture deals in different real estate segments including commercial real estate projects, hospitality, residential and mixed use projects, acquisition of buildings that are substantially complete or in different stages of construction/completion.

Joint venture is an agreement between two or more parties wherein they principally agree on developing a new asset or entity by infusing equity for a term. In a joint venture transaction, parties agree to co-operate with each other and term of joint venture may be defined or open. Parties to a joint venture agreement generally agree to certain timelines and milestones and subject to milestones being achieved, the agreement will result in to a new transaction or result in completion of joint venture.

Clearly, joint venture is today one of the most preferred choice globally given the flexibility offered by the mechanism. Joint ventures in UAE are recognized and regulated pursuant to UAE Commercial Companies Law (Federal Law number 8 of 1984). There is a rise in joint venture transactions in real estate within the UAE. To illustrate, owners of land parcels who do not have knowledge, acumen or experience in construction and development of properties may find joint venture proposal from experienced property developer appealing and comforting. But don't think joint venture marriages are made in heaven. If the parties to joint venture transaction are unclear about their respective roles or if the joint venture contract is not certain and definite or parties' choice of JV vehicle (Wholly owned, branch, partnership, consortium or contractual joint venture) is not the correct form of entity, the purpose and objective of such joint venture is likely to fail.

The complexities surrounding construction business in terms of process, environment and entity structures exposes participants to a certain degree of risk. Accordingly, risk identification is important in construction projects and careful planning would ensure that project is successfully delivered. The risks of failure of real estate joint ventures can be high and the financial consequences may be expensive. Parties should carry out detailed due diligence. We have discussed due diligence in real estate in Court Uncourt at greater length.

The joint venture partnership that is effectively successful in achieving its commercial and business objectives within resources contributed by each joint venture party will satisfy the definition of a successful JV. Such successful JV besides achieving its objectives also brings trust, confidence and opportunities to parties. Domestic or international joint ventures are however subject to risks as discussed above.

In real estate transactions, for instance, parties may be subject to one or more of the following:-

a. Financial risks that may arise on account of inflation, cost of borrowing, bankruptcy of either party, interest rate fluctuations, complex exchange controls or related financial difficulties;
b. change in statutory regulation, increased compliance, increase in transfer fees, imposition of new taxes or stamp duties, imposition of unfavorable conditions, or difficulties in withdrawing capital;
c. increased cost of construction, failure to achieve projections, delayed approvals, disputes from contractor or third parties, availability of labor;
d. other restrictions including price controls, conflict of interest issues, etc.

Almost all real estate and construction projects require third party financing. Assets are often financed through non-recourse loans and these loans are subject to bonds and guarantees in favor of lenders. Parties should carefully examine and review guarantor obligations. Likewise management responsibilities needs to be clearly defined.

Real estate developments are also generally in need of more capital than is initially budgeted. Urgent capital requirements coupled with lack of clear contractual provisions can often put JV parties in a dispute. Parties to JV agreement should identify the party that is entitled to call for additional capital and consequences for failure of party that fails to provide such additional required capital. The joint venture agreement should also provide for a clear exit mechanism allowing a party to exit the joint venture.

Joint venture is a great structure which combines strengths of property developer and equity partner but a strong joint venture agreement, sound underwriting and careful planning are keys to govern relationship of parties and conclude a successful joint venture transaction.