

Joint Venture Companies in India

Formation & Dispute Resolution Mechanism

**Presentation by
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Senior Partner**

ZEUS Law Associates

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About Zeus Law Associates

ZEUS Law ('ZEUS') is an ISO certified full-service Law Firm, established in 2005, under the visionary leadership of experienced practitioners and partners, Vivek Kohli and Sunil Tyagi, having over 25 years of experience. The primary aim at ZEUS is to provide legal services of unparalleled quality that adds value, both to the client's business as well as to the society at large.

ZEUS strength lies within its unified team structure and shared understanding of law & finance. Presently, ZEUS comprises of 2 Founding Partners, assisted by Sandeep Bhuraria & Jayshree N. Chandra, both Partners, 3 Managing Associates, 4 Senior Associates and 13 Associates besides Consultants & Para Legal staff. ZEUS has a very strong Mediation practice headed by Prerna Kohli, who enjoys international accreditation besides years of experience in achieving settlements rather than pursue litigations.

Each assignment is led by a Partner who not only supervises the execution but is also involved in the strategic decision making. The privilege of a wide and varied experience in several laws permits the Partners an uncommon understanding of the market place. This enables them to collaborate with the Client to arrive at innovative, sophisticated and customized solutions that addresses the specific issue in its totality.

ZEUS's industry insight and commercial awareness, coupled with its in-depth jurisdictional knowledge has helped it create a niche for its legal services. ZEUS focuses on building and nurturing lasting relationships with Clients. ZEUS lawyers listen, understand and contribute. By driving brainstorming sessions both within its team and during interactions with its Clients, ZEUS professionals focus on delivering solutions that are business specific and best suited to the goals set out by the Clients.

Areas of Practice

- Corporate & Commercial Law
- Corporate Insolvency and Restructuring
- Real Estate & Infrastructure
- Joint Venture & Private Equity
- Foreign Investment
- General Commercial Advisory
- Litigation and Alternate Dispute Resolution
- Indirect Taxation

Sectors / Industries

- Agro-based Industries
- Automobile
- Aviation
- Banking
- Chemicals & Fertilisers
- Education
- Entertainment & Media
- FMCG
- Health & Pharmaceuticals
- Mining
- Oil & Gas
- Leisure & Hospitality
- Power
- Real Estate & Infrastructure
- Telecom
- Tobacco
- Tourism
- Transportation & Logistics
- Wineries

ZEUS Team has been working closely with Government of India, various Government Bodies, Public Sector Undertakings, Banks, Financial Institutions, Multi-national and National Corporations.

ZEUS counsels, advises and provides assistance to many International corporate clients from USA, UK, Europe and Asia (prominently Japan and Gulf countries).

Recent Japanese Clients

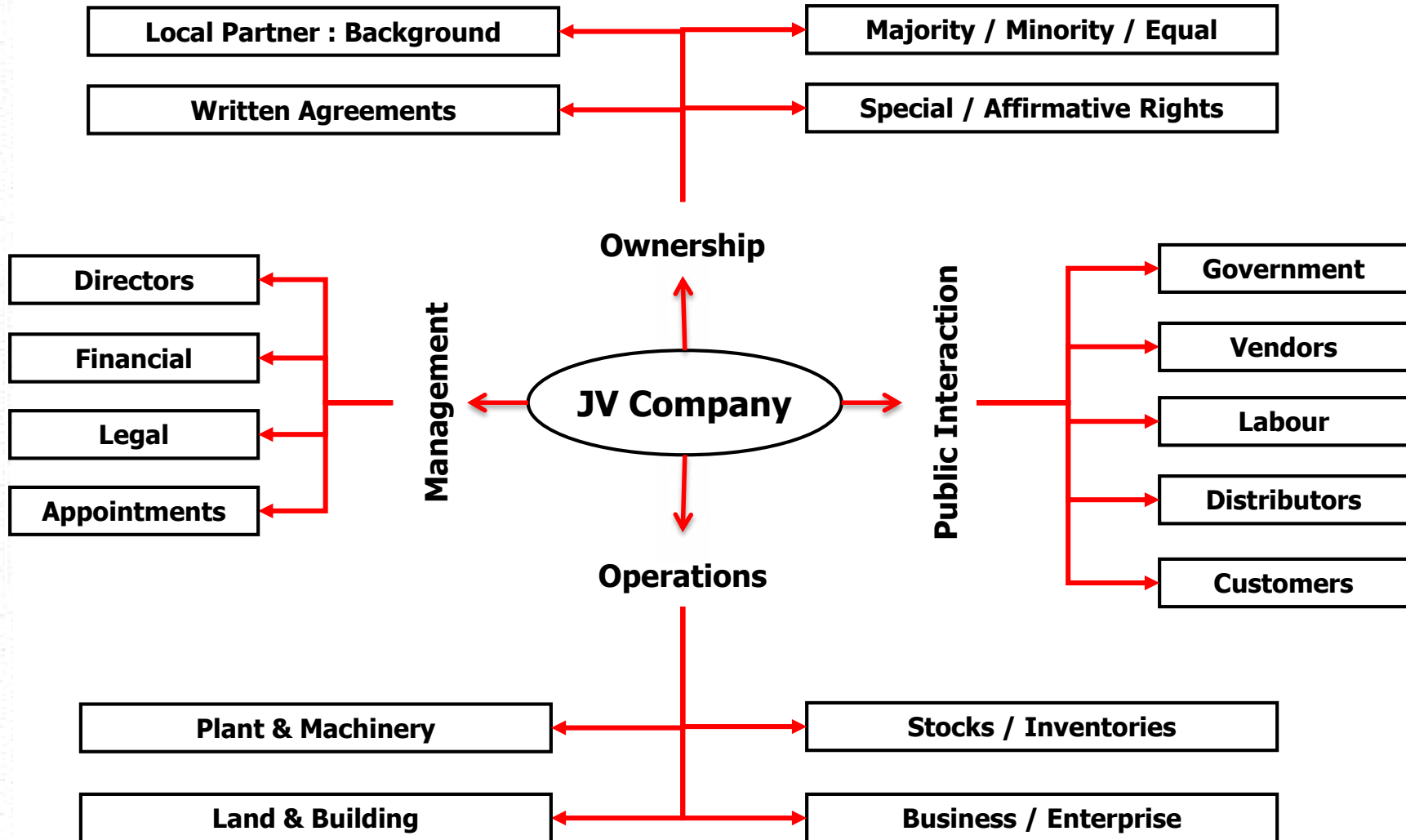
- Mitsui Kinzoku Act Corporation
- Fujitsu Frontech Limited
- Nippon Carbide India Private Limited
- Tokyo Foundry Company Limited
- Toshiba Corporation
- Value Design Inc.
- Nishikawa Rubber Co., Limited
- THK India Private Limited
- Hitachi India Limited
- Shimizu Corporation India Private Limited
- Alps Logistics India Private Limited
- Obara Group Inc.
- JoinUP Corporation
- Honda Lock Manufacturing Company Limited
- JVC Kenwood Marketing India Private Limited
- INFOBRIDGE Marketing & Promotions Co. Ltd



Law

Points of Concerns

Overview





Law

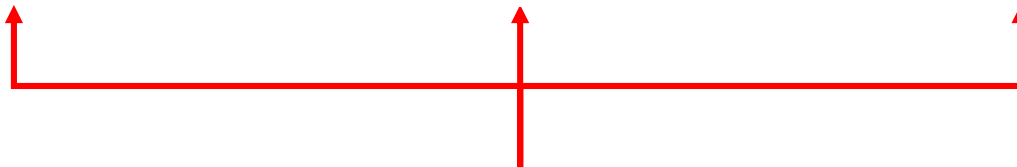
Ownership

Local Partner

Directors

Company

Shareholders



Whose ?

Who ?

Due Diligence

How ?

Desktop Search

Site Visit

Meetings

Cost



Timeline

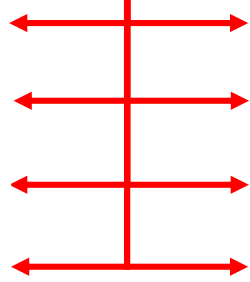
Scope

Character & Reputation

Capability : Expectation / Limitation

Finance, Tax & Accounting

Status & Compliances



Business & Assets

Legal History : Disputes

Past Joint Ventures

Risk Factors associated



Law

Ownership

Share Holding

Less than or Upto 10%

- Meeting of the shareholders at shorter notice, which requires consent of of :
 - i. all of shareholders in case of the holding of an AGM; and
 - ii. 95% in case of holding any other meeting of the shareholders (EGM)
- Exit opportunities as dissenting shareholders : in case an acquirer become a registered holder of 90% or > of issued equity share capital, minority shareholders are permitted to offer their shares to the acquirer at a price determined on the basis of a valuation of a registered valuer.

Common Rights

Available to ALL Share Holders :

- Attend Shareholders' Meeting
- Quorum
- Vote
- Dividend

10% < BUT < 25%

Right to :

- Requisition an EGM
- Challenge variation of rights
- Initiate Class Action
- Challenge oppression & mismanagement

Share Holding

25% < BUT < 50%

- Minority Position. BUT, active.
- Consent necessary for critical issues, such as :

| | | |
|-------------------------------|--|--|
| ◆ change of line of business; | ◆ inter-corporate loans & investments crossing permissible threshold limits; | ◆ selling substantial business; |
| ◆ change of name; | ◆ mergers & demergers; | ◆ removal of Auditors; |
| ◆ modifications by-laws; | | ◆ shifting Registered Office from one State to another |
| ◆ buy-back of shares; | | |



Law

Ownership

Share Holding

50% < BUT < 75%

- Majority Share Holding. Effective control over management of the Company.
- Can pass Ordinary Resolutions (- i.e., those resolutions which require a simple majority) without support from any other shareholder – such as :

- ◆ Appoint or Dismiss Directors;
- ◆ Financial Control

- ◆ Operations
- ◆ Vendors; Distributors

➤ 50% :: 50%



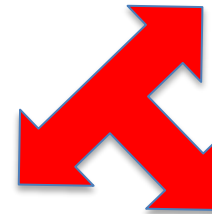
- Equal Rights
- In case there is a **DISAGREEMENT**, it's a Deadlock Situation. Complete stalemate. Hampers the smooth working of the Company

Share Holding

75% < BUT < 90%

- Super Majority
- Can pass ALL Resolutions – Special & General
- Effective Control of Company

> 90%



- Effective Ownership of Company

Affirmative Rights

Super Majority & Effective Ownership of Company is subject only to the Affirmative Rights



Law

Ownership

Affirmative Rights

Regarding Shares

◆ Issue & Transfer of Shares

◆ Exit Options

Proportionate Issue

No Outsiders

Lock In Period

Tag Along Rights

Right of First Offer

Right of First Refusal

Valuation of Shares

Drag Along Rights

Caution Notes

- Issue of Shares : < 60 days of date of receipt of consideration
- Transfer of Shares : < 1 month of date of receipt of request
- Debentures : < 6 months of date of allotment



Share Holding

Consent Necessary for Critical Issues

- ◆ Change of name;
- ◆ Shifting Registered Office from one State to another;
- ◆ Modification of by-laws;
- ◆ Change of line of business;
- ◆ Sale of substantial business;
- ◆ Merger & demerger

- ◆ Auditors;
- ◆ Debt Funding : Bank Loans; Inter-Corporate Deposits; Debentures etc.
- ◆ Appointments to critical positions;
- ◆ Expense above specified Limit;
- ◆ Initiating Critical Legal Disputes





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Management

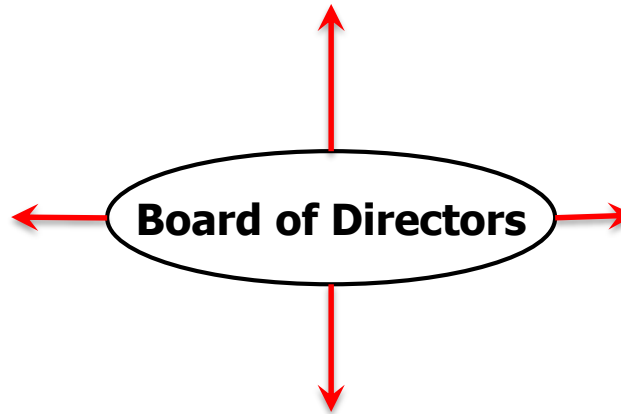
Board of Directors

Constitution Of Board

- Board must have a minimum of 2 Directors and a maximum of 15 Directors
- Must have atleast one Resident Director
- Directors may be Proportionate to Shareholding Or as per agreement
- Nominee Directors : May be removed only by Nominating Party
- Appointment of Chairperson : Casting Vote under the New Act

Appointment of Directors

- Additional Director : Board
- Ratified : AGM / EGM
- Director : AGM / EGM
- Alternate Director : By choice of Party
- Filings : 30 days



Critical Function

Financial :

- Bank Accounts & Signatories
- Auditors

Legal :

- Compliances
- Authorisation : Sue or Defend

Functioning Of Board

Decision Making Process

- ◆ By Resolution : Present & Voting Or by Circulation
- ◆ By Majority Or Unanimously
- ◆ Chairman : Casting Vote

Powers of Appointment

- ◆ Managing Director
- ◆ Chief Financial Officer
- ◆ Chief Legal Officer
- ◆ Production / Factory Head
- ◆ All other key positions

Meetings

- ◆ Frequency : Once in 3 month
- ◆ Notice : 1 week
- ◆ Quorum : One Third – May have special restrictions
- ◆ Location : By agreement



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Operations

Control Of

Funding

Equity

- ◆ Shares of the Company
- ◆ Preferential Shares with differential Voting Rights
- ◆ Debentures : Convertible upon Trigger Conditions

Debt

- ◆ Promoters : Unsecured
- ◆ Banks : Term Loan : Secured
- ◆ Banks : Working Capital
- ◆ Credit from Vendors : Unsecured

External Commercial Debt

- ◆ From Foreign Partner
- ◆ It is usually Unsecured
- ◆ End Use Restrictions
- ◆ Lock In Period

Production

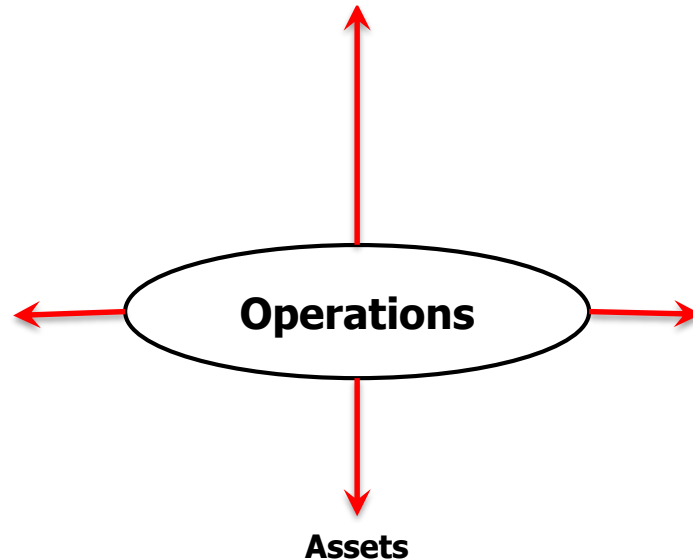
- The Production Process
- The Reporting Mechanism
 - Weekly
 - Monthly
 - Quarterly

Raw Material / WIP / Finished Goods

- Land & Building
- Plant & Machinery
- Technical Know How : Technology Transfer Agreements
- Intellectual Property Rights

Critical Functions

- Factory Manager :**
- Production Process
 - Quality Control
- Human Resource :**
- Key Resources
 - Labour

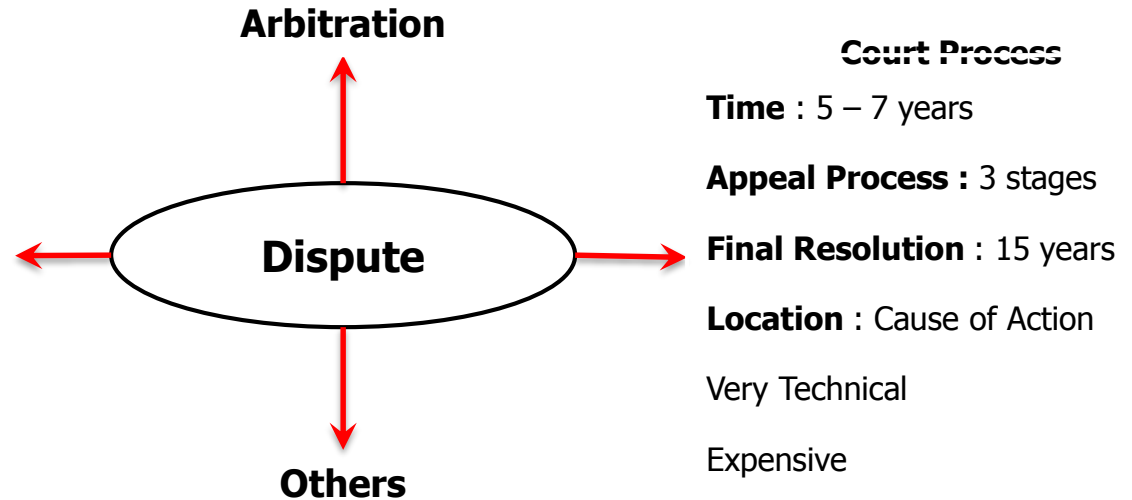




Law

Dispute Resolution

Options



Mediation & Conciliation

- ✓ Voluntary Process
- ✓ Resolution only if there is a voluntary and acceptable settlement
- ✓ Termination upon withdrawal from process
- ✓ Professionals to assist in the process

Court Process

- Time** : 5 – 7 years
- Appeal Process** : 3 stages
- Final Resolution** : 15 years
- Location** : Cause of Action
- Very Technical
- Expensive

Insolvency Code

- ◆ On Default of Debt
- ◆ Time Bound Process
- ◆ No direct benefit
- ◆ Once Company is in Resolution, no assurance of recovery or how much recovery

Companies Act

- Oppression & Mismanagement
- Specific issues related to Act
- ✓ Non issuance of Shares / Debentures
- ✓ Non Transfer / Transmission of Shares
- ✓ Non payment of Dividend
- ✓ Non filing of Returns
- ✓ Non holding of Statutory Meetings – BoD & AGM

Criminal Action

- On offence committed
- ✓ Cheating
- ✓ Criminal Breach of Trust
- ✓ Misappropriation or Defalcation of Funds
- ✓ Fraud or Forged Papers
- ✓ Conspiracy



Law

Dispute Resolution

Arbitration

Nature of Process

- ◆ Voluntary
- ◆ Adjudicatory
- ◆ Confidential Process

Party Autonomy : Choice of

- ✓ Arbitrator
- ✓ Seat & Governing Law
- ✓ Venue
- ✓ Procedure

Powers of Tribunal

- ◆ Interim Orders
- ◆ Question of Competence
- ◆ Bar on Judicial Intervention

Efficiency of Process

Time Bound : 12 – 18 months

Process :

- ✓ Statement of Claim
- ✓ Statement of Defense / Counter Claim
- ✓ Rejoinder

Evidence : If required

Hearing : Day to Day



Critical Issues

- ◆ Venue and Seat of Arbitration
- ◆ Governing Law & Procedural Rules
- ◆ The Arbitrators

Award

- ◆ Binding
- ◆ Enforceable
- ◆ Executable

Appeal

- ◆ Limited Grounds of Appeal
- ◆ Very narrow interpretation by the Supreme Court of India
- ◆ Only 2 stages of Appeal – that too time bound



Law

Case Study – I

Joint Venture : NCLT

| Indian Partner | Oil & Gas Sector | American Partner |
|----------------|--------------------------|------------------|
| 50% | Share Holding | 50% |
| 1 | Board of Directors | 1 |
| Zero | Debt : Promoter Loans | 1.5 Million USD |
| No | Sourcing of Raw Material | Yes |
| No | Sourcing of Client | Yes |

DEADLOCK DEADLOCK DEADLOCK DEADLOCK DEADLOCK

Documentation / Agreement : Status

JV Agreement : Inadequate. Relationship based on TRUST.
 Share Holders Agreement : American Partner wanted it. Indian Partner was resisting it.

Trigger

Trigger : Expansion of Business. American Partner insisted on equal loan from Indian side. Exposure has to be equal. Indian Partner declined.

Consequence

Indian Partner moved the National Company Law Tribunal (NCLT). Prayers as follows :

1. No decision unless by consensus.
2. No disturbance over financial control.

Operational Matters : Status

Statutory Meetings : Irregular
 Financial & Operational Control : Indian Partner
 Promoter Loans : As External Commercial Borrowings from American Partner. Loans NOT secured. Raw Material purchased were not hypothecated. Nor Finished Goods.

Financial Exposure : The American Partner was ALL IN. The Indian Partner was enjoying an unequal (lesser) exposure.

Present Status

American Partner wishes to trigger an Exit. A Buy or Sell at Fair Market Value.

Indian Partner agrees to an Exit but NOT at Fair Market Value. Wants adequate compensation.

Key Take Away : Documentation is WEAK. Investment before documentation exposes investment to risk.

| Indian Partner | Wellness Sector | French Partner |
|----------------|--|----------------|
| 76% | Share Holding | 24% |
| 3 | Board of Directors | 1 |
| No | Affirmative Rights | Yes |
| No | Technology / Technical Know How | Yes |
| Yes | Market Responsibility | No |

Documentation / Agreement : Status

Memorandum of Understanding : Initial
 Joint Venture / Share Holders Agreement : Yes.
 Detailed strong terms regarding Affirmative Rights

Trigger : Indian Partner desired to oust the French Partner from the Business

Issue : Valuation. French Partner wants to continue or exit at Fair Market Value. Indian Partner resists

Consequence

- French Partner initiated Arbitration.
1. Arbitration is in Delhi and Delhi Courts jurisdiction.
 2. Arbitrator is a retired Supreme Court Judge
 3. Efficient. Fair & Impartial.

Key Take Away : Clear, pre-defined documentation. Dispute Resolution Process is efficient.

Operational Matters : Status

Statutory Meetings : Irregular
 Financial & Operational Control : Indian Partner
 Market Penetration : Successfully established
 Business : Profitable. Valuation is High

Present Status

Interim Orders : Indian Partner has to : (i) provide monthly Financial Accounting Report; and (ii) Quarterly Audits at the option of the French Partner

Negotiations going on for Exit Possibility

Mediation : The Arbitrator is acting as a Mediator and assisting the Parties in arriving at a negotiated settlement

Thank You

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