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Exploring Key Contractual Clauses for Joint Ventures under Indian Commercial Laws

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ABSTRACT

This article discusses the various contractual clauses in joint venture agreements under Indian commercial laws. The joint venture structure is becoming increasingly popular in India due to its advantages. However, joint ventures can be complex and require careful drafting of agreements to avoid disputes. The article highlights key clauses such as the management and control clauses, confidentiality clauses, non-compete clauses, termination clauses, and shareholders' rights clauses. The article also discusses the importance of incorporating a severability clause to ensure that the enforceable clauses of the contract are saved in case of unenforceability of a clause. Henceforth, the article provides insight into the legal considerations for drafting effective joint venture agreements in India.

Keywords: *joint venture, contractual clauses, Indian commercial laws, force majeure, representation, warranties.*

I. INTRODUCTION

Joint ventures are a popular form of business collaboration where two or more entities come together to undertake a specific business project. Joint ventures offer several advantages, including risk-sharing, pooling of resources, and access to new markets. However, they also involve several legal complexities, and the success of the venture depends on several factors, including the terms of the joint venture agreement. This article explores some of the critical contractual clauses in joint venture agreements in the context of Indian commercial laws. It covers clauses related to the purpose of the joint venture, the contributions of the parties, management and decision-making, termination and dissolution, and shareholders' rights. Understanding these clauses is essential for drafting effective joint venture agreements that protect the interests of all parties involved.

II. CONTRACTS

The Indian Contracts Act of 1872 is the primary legislation governing contracts in India.[3] This law defines the various types of contracts and the rights and obligations of parties to a contract.

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[3] The Indian Contract Act, 1872 (Universal Law Publishing 1996).

The Act lays down the basic requirements for a contract to be valid, including offer, acceptance, consideration, and the capacity of the parties to contract. Under the Indian Contracts Act, every contract must be made for a lawful object and must not be against public policy. Contracts entered into through coercion, undue influence, or fraud are considered voidable and can be rescinded by the aggrieved party. The Act recognizes various types of contracts, such as contracts of sale, contracts of guarantee, contracts of bailment, and contracts of agency. Each type of contract has its own set of rules and regulations that must be followed.

In addition to the Indian Contracts Act, there are other laws that may apply to specific types of contracts, such as the Sale of Goods Act, the Negotiable Instruments Act, and the Partnership Act. It is important for individuals and businesses to understand the legal framework governing contracts in India and to ensure that their contracts are valid, enforceable, and comply with all legal requirements. Seeking legal advice when entering into a contract can help avoid disputes and protect the interests of all parties involved. Any agreement that can be enforced in a court of law is a contract. All contracts in India are governed by the Indian Contracts Act of 1872.[4]

According to the Indian Contracts Act, every contract must include a valid consideration, which may not necessarily be monetary or adequate.[5] Past consideration is also acceptable in India. The contract's purpose must be legal and not violate any laws or public policies, and it must not be fraudulent or harmful to individuals or property. Contracts are vital in commerce as they enable legally enforceable agreements. Typically, all associations have a contract delineating their rights and responsibilities, and commercial transactions require a contract.

III. CONTRACTS AND JOINT VENTURES TRYST

Contracts and joint ventures are closely related as joint ventures are typically established through contracts.[6] A joint venture is a business arrangement where two or more parties come together to carry out a specific project or business activity.[7] These parties may be individuals or companies who contribute resources, such as capital, expertise, or labor, to the joint venture. The parties agree to share in the profits and losses of the venture in accordance with their contributions. To establish a joint venture, the parties must enter into a joint venture agreement, which is a type of contract. This agreement outlines the terms and conditions of the joint venture,

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[4] The Indian Contracts Act, 1872, No. 09, Acts of Parliament, 1872

[5] Taxmann, *Consideration under the Indian Contract Act*, TAXMANN BLOG (2021), https://www.taxmann.com/post/blog/consideration-under-the-indian-contract-act-1872/ (last visited Apr 20, 2023).

[6] Steven C Currall and Andrew C Inkpen, 'A Multilevel Approach to Trust in Joint Ventures' (2002) 33 Journal of International Business Studies 479.

[7] Joint ventures and partnering, https://www.infoentrepreneurs.org/en/guides/joint-ventures-and-partnering/ (last visited Apr 20, 2023).

including the contributions of each party, the management structure, the distribution of profits and losses, and the duration of the venture.

The joint venture agreement may also include other contractual clauses, such as intellectual property rights, confidentiality agreements, and dispute resolution mechanisms. These clauses are important in protecting the interests of the parties and ensuring that the joint venture operates smoothly. Indian commercial laws recognize joint ventures as a valid form of business organization and provide a legal framework for their establishment and operation. Therefore, it is important for parties involved in a joint venture to ensure that their contractual clauses are in compliance with Indian commercial laws to avoid any legal issues.

(A) Type of Joint Ventures

Joint ventures are business partnerships between two or more companies or organizations, who collaborate and contribute resources to achieve common goals.[8] Here are some common types of joint ventures:

1. *Contractual Joint Venture:*

This type of joint venture involves an agreement between partners to work together on a specific project or set of projects, without creating a new legal entity. Partners agree on how to share the costs, risks, and profits of the project. A contractual joint venture is a partnership where two or more companies agree to work together on a specific project or set of projects, without creating a new legal entity. Here are some key features of contractual joint ventures:

- ***Specific goals:*** Contractual joint ventures are established to pursue specific goals, such as developing a new product, completing a construction project, or exploring a new market.
- ***No new legal entity:*** Unlike other types of joint ventures, contractual joint ventures do not create a new legal entity. The partners remain separate legal entities and are responsible for their own liabilities and obligations.
- ***Shared risks and rewards:*** The risks and rewards of the contractual joint venture are shared among the partners according to the terms of the agreement. Profits and losses are distributed according to each partner's contribution and participation in the project.
- ***Limited duration:*** Contractual joint ventures are typically established for a limited period of time, after which the joint venture is dissolved and the partners return to

[8] Joint Venture and Its Types' (GeeksforGeeks, 1 October 2022) accessed 13 April 2023.

operating as separate companies.

- ***Flexible governance:*** Contractual joint ventures are often governed by flexible structures that allow for easy adaptation to changing circumstances. The partners agree on the roles and responsibilities of each member of the joint venture and how decisions will be made throughout the project.

2. ***Equity Joint Venture:***

In this type of joint venture, partners agree to invest and share ownership in a new business entity.[9] Each partner contributes capital, and profits and losses are shared according to the percentage of ownership. An equity joint venture is a partnership where two or more companies agree to invest capital, resources, and expertise to form a new business entity. Here are some key features of equity joint ventures:

- ***Shared ownership:*** Both partners in an equity joint venture share ownership of the new business entity. Each partner contributes capital, resources, expertise, and technology to the joint venture.
- ***Risk and reward sharing:*** The risks and rewards of the joint venture are shared between the partners according to the terms of the agreement. Typically, profits and losses are distributed in proportion to the ownership share of each partner.
- ***Technology transfer:*** Equity joint ventures often involve the transfer of technology, know-how, and intellectual property between the partners. This can help to improve the competitiveness of the joint venture and provide access to new markets.
- ***Governance structure:*** An equity joint venture typically has a formal governance structure in place, including a management team and decision-making processes. The partners agree on the roles and responsibilities of each member of the joint venture and how decisions will be made throughout the project.
- ***Long-term commitment:*** Equity joint ventures are often established for a long-term commitment. The partners are committed to the joint venture for the duration of the agreement, which may be several years or even decades. This allows for a greater level of investment in the project and the potential for long-term growth and profitability.

3. ***Co-operative Joint Venture:***

In this type of joint venture, partners combine resources to pursue common goals, such as

[9] Equity joint venture - Valen, https://valen-legal.com/news/equity-joint-venture/ (last visited Apr 20, 2023).

research and development, marketing, or distribution. Each partner retains its own separate legal identity, and the joint venture is managed by a separate entity. A co-operative joint venture is a partnership where two or more companies come together to pursue common goals, while retaining their own separate legal identities. Here are some key features of co-operative joint ventures:

- ***Common goals:*** Partners in a co-operative joint venture work together towards common goals, such as research and development, marketing, or distribution. Each partner contributes resources and expertise to achieve the shared objectives.
- ***Separate legal entities:*** Each partner retains its own separate legal identity in a co-operative joint venture. The joint venture is managed by a separate entity, which is jointly owned by the partners.
- ***Shared risks and rewards:*** The risks and rewards of the co-operative joint venture are shared among the partners according to the terms of the agreement. Profits and losses are distributed according to each partner's contribution and participation in the project.
- ***Limited duration:*** Co-operative joint ventures are typically established for a limited period of time, after which the joint venture is dissolved and the partners return to operating as separate companies.
- ***Flexible governance:*** Co-operative joint ventures are often governed by flexible structures that allow for easy adaptation to changing circumstances. The partners agreeon the roles and responsibilities of each member of the joint venture and how decisions will be made throughout the project.

4. ***Consortium Joint Venture:***

This is a type of joint venture where multiple companies join together to bid on a large project, such as a government contract or infrastructure project. Each company contributes its own expertise and resources, and profits are shared according to the terms of the consortium agreement.

A consortium joint venture is a type of partnership where multiple companies collaborate to pursue a common goal. Here are some key features of consortium joint ventures:

- ***Joint bidding:*** Companies form a consortium to bid on large projects that they might not be able to pursue on their own, such as infrastructure development or government contracts.
- Shared resources: Each company in the consortium brings its own expertise, resources,

and funding to the project, allowing for more efficient use of resources and a higher chance of success.

- ***Risk and reward sharing:*** The risks and rewards of the consortium joint venture are shared among the partners according to the terms of the agreement. Profits and losses are distributed according to each partner's contribution and participation in the project.
- ***Temporary entity:*** A consortium joint venture is a temporary entity formed solely for the purpose of completing the project. Once the project is completed, the joint venture is dissolved and the partners return to operating as separate companies.
- ***Governance structure:*** A consortium joint venture typically has a formal governance structure in place, including a management team and decision-making processes. The partners agree on the roles and responsibilities of each member of the consortium and how decisions will be made throughout the project.

5. ***International Joint Venture:***

This type of joint venture involves companies from different countries partnering to achieve common goals, such as entering new markets or developing new products. This type of joint venture requires careful consideration of cultural, legal, and political differences. International joint ventures are partnerships between two or more companies from different countries, aimed at achieving common business objectives. Here are some key features of international joint ventures:

- ***Shared ownership***: Both partners in an international joint venture share ownership of the new business entity. Each partner contributes capital, resources, expertise, and technology to the joint venture.
- ***Risk and reward sharing***: The risks and rewards of the joint venture are shared between the partners according to the terms of the agreement. Typically, profits and losses are distributed in proportion to the ownership share of each partner.
- ***Technology transfer:*** International joint ventures often involve the transfer of technology, know-how, and intellectual property between the partners. This can help to improve the competitiveness of the joint venture and provide access to new markets.
- ***Cultural differences:*** International joint ventures require careful consideration of cultural differences between the partners. This includes differences in language, customs, business practices, and legal systems.
- ***Government regulations:*** International joint ventures must comply with regulations

and laws in both partner countries. This includes legal and tax requirements, as well as any restrictions on foreign investment or technology transfer.

IV. Trust in international joint venture relationships

Trust is an essential factor in the success of international joint venture relationships. When companies from different countries and cultures come together to form a joint venture,[10] they often bring with them different management styles, communication norms, and expectations. Trust can help to bridge these differences and foster a sense of cooperation and mutual understanding between the partners.[11] Here are some reasons why trust is important in international joint venture relationships:

- ***Enables effective communication:*** Trust is the foundation of effective communication. In an international joint venture, partners must communicate effectively to share information, resolve conflicts, and make decisions. Trust helps to ensure that communication is open, honest, and timely.
- ***Promotes cooperation:*** Trust promotes a sense of cooperation and mutual understanding between partners. When partners trust each other, they are more likely to work together to achieve common goals.
- ***Reduces transaction costs:*** Trust can reduce the transaction costs associated with joint ventures. When partners trust each other, they are less likely to engage in opportunistic behavior, such as withholding information or reneging on agreements.
- ***Facilitates knowledge sharing***: International joint ventures often involve the exchange of knowledge and technology between partners. Trust can facilitate this exchange by encouraging partners to share their knowledge and expertise.
- ***Enhances relationship longevity***: Trust is essential for the longevity of the joint venture relationship. Partners who trust each other are more likely to continue working together and invest in the relationship over the long term.

In a nutshell, trust is critical for the success of international joint venture relationships. Partners who trust each other are more likely to communicate effectively, cooperate, reduce transaction costs, share knowledge, and maintain a long-lasting relationship.

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[10] Margreet Boersma-de Jong, Peter Buckley and Pervez Ghauri, 'Trust in International Joint Venture Relationships' (2003) 56 Journal of Business Research 1031.

[11] Margreet F. Boersma, Peter J. Buckley & Pervez N. Ghauri, *Trust in international joint venture relationships*, 56 J. BUS. RES. 1031 (2003).

(A) MNC and Joint Ventures Agreement

Multinational corporations (MNCs) often use joint ventures as a way to enter new markets, gain access to local resources and expertise, and share risks and costs with local partners.[12] Here are some ways in which MNCs use joint ventures:

- Market entry: MNCs may use joint ventures to enter new markets where they have limited knowledge or experience. By partnering with a local company, the MNC can gain access to local market knowledge, distribution networks, and customer relationships.
- Risk sharing: Joint ventures allow MNCs to share the risks and costs associated with entering new markets or launching new products. By partnering with a local company, the MNC can leverage the local partner's resources and expertise while sharing the costs and risks of the venture.
- Access to local resources: Joint ventures can provide MNCs with access to local resources, such as raw materials, manufacturing facilities, or distribution networks. This can help the MNC to reduce costs and improve efficiency.
- Technology transfer: Joint ventures can also provide MNCs with access to local technology and expertise. By partnering with a local company, the MNC can gain access to local research and development capabilities, as well as local talent and expertise.
- Strategic alliances: Joint ventures can also be used as a way to form strategic alliances with local companies. By partnering with a local company, the MNC can build relationships and establish a presence in the local market, which can help to improve its long-term competitiveness. Here are some examples of joint ventures:

1. Sony Ericsson - a joint venture between Sony and Ericsson to manufacture mobile phones and related accessories.
2. Hulu - a joint venture between Disney, NBCUniversal, and WarnerMedia to provide streaming video-on-demand services.
3. Starbucks JV in China - a joint venture between Starbucks and Chinese company, with the goal of expanding Starbucks' presence in China.

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[12] SR Raveed and William Renforth, 'State Enterprise-Multinational Corporation Joint Ventures: How Well Do They Meet Both Partners' Needs?' (1983) 23 Management International Review 47.

4. Toyota Peugeot Citroën Automobile - a joint venture between Toyota and Peugeot Citroën to manufacture automobiles in the Czech Republic.
5. Dow Corning - a joint venture between Dow Chemical Company and Corning Inc. to manufacture and market silicone products.
6. Verizon Wireless - a joint venture between Verizon Communications and Vodafone Group to provide wireless telecommunications services in the United States.
7. Procter & Gamble-Gillette - a joint venture between Procter & Gamble and Gillette to produce and market consumer products, such as shaving products and personal care items.
8. General Motors-Shanghai Automotive Industry Corporation - a joint venture between General Motors and Shanghai Automotive Industry Corporation to manufacture and sell automobiles in China.
9. Airbus - a joint venture between European aerospace companies to design, manufacture, and market commercial aircraft.
10. McDonald's-Joint Venture in India - a joint venture between McDonald's Corporation and Indian company to operate McDonald's franchises in India.

V. Joint venture contracts

Joint Ventures refer to a type of partnership in which two or more entities or individuals combine their resources and expertise towards a specific objective.[13] This partnership may be for a single transaction, a project, or until a particular goal is achieved. In a Joint Venture, each co-venturer has an active role to play, and their contribution may not only be financial but also include expertise, connections, or locational advantages, among other things. Essentially, it is a mutually beneficial relationship between two parties.[14]

Joint Ventures can serve various purposes, such as leveraging resources, exploiting expertise, sharing liabilities to minimize risks, accessing new markets, and diversifying business operations. When it comes to entering foreign jurisdictions, Joint Ventures are preferred, as partnering with a local entity can provide valuable local knowledge and on-site resources, minimize risks, and reduce costs. The entities involved in a Joint Venture need not be equal members, nor do they have to contribute equally to the partnership. In India, Joint Venture

[13] Joint Venture' (LII / Legal Information Institute) <https://www.law.cornell.edu/wex/joint_venture> accessed 13 April 2023

[14] Draft Joint Venture Agreements, https://taxguru.in/corporate-law/draft-joint-venture-agreements.html (last visited Apr 20, 2023).

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agreements are not governed by a separate law, but rather by the general principles and laws that govern contracts, specifically the Indian Contracts Act.

The law that applies to the Joint Venture will depend on whether it is to be incorporated or not, and may be subject to the Indian Partnership Act[15] or the Indian Companies Act.[16]

When it comes to Joint Ventures in India, Unincorporated Joint Ventures are often preferred for shorter transactions. These types of transactions are governed by the agreement that the co-venturers enter into at the time of formation. Unincorporated Joint Ventures do not create equity capital nor do they establish a separate corporate entity. They can be established through a contract or a partnership, with a contractual Joint Venture being bound by the terms of the contract and a partnership Joint Venture being bound by the Partnership Act. This type of Joint Venture is ideal for situations where flexibility is key.

In contrast, an incorporated Joint Venture is considered a domestic company and is regulated by the Indian Companies Act. It involves two companies providing equity and creating a Joint Venture company that will exist independently of the constituent companies. This type of Joint Venture provides the added benefit of having limited liability and can survive changes in ownership. The most common ways of creating an incorporated Joint Venture include both companies providing cash to subscribe for shares or one of the companies providing technical expertise or technology in exchange for shares while the other company pays cash for subscription to shares.

VI. Limited Liability Partnership Act of 2008,[17]

LLPs are a hybrid form of partnership that provide the benefits of both a company and a partnership. LLPs have a separate legal identity from its partners, which means that the partners' personal assets are protected in the event of the LLP's debts or liabilities.

In the context of Joint Ventures, LLPs provide a suitable option for co-venturers who wish to create a separate legal entity with limited liability protection. An LLP can be formed by two or more individuals or companies, and the LLP agreement must be in accordance with the LLP Act. LLPs are also beneficial for Joint Ventures as they provide flexibility in terms of ownership and management. Unlike companies, there is no restriction on the transfer of ownership in LLPs, and partners can manage the affairs of the LLP as per the agreement.

It is important to carefully draft the Joint Venture agreement in order to avoid unintended tax

[15] The Indian Partnership Act, 1932, No. 09, Acts of Parliament, 1932
[16] The Indian Companies Act, 2013, No. 18, Acts of Parliament, 2013.
[17] The Limited Liability Partnership Act, 2008, No. 6, Acts of Parliament, 2009.

consequences. In addition, the agreement should clearly define the roles and responsibilities of each co-venturer, the scope of the Joint Venture, the duration of the partnership, and the terms of sharing profits and losses. It should also include provisions for dispute resolution, termination, and exit mechanisms for the co-venturers. Properly drafted agreements can help minimize the risk of disagreements and conflicts between the co-venturers during the course of the Joint Venture.

Regardless of the type of Joint Venture, there are certain fundamental clauses that must be included in the contract. These clauses include defining the terms used in the agreement to avoid confusion, determining the name of the Joint Venture, specifying the date of formation and the location of its registered office, identifying the term of the Joint Venture, stating its purpose, detailing the share or percentage of participation of each party, outlining the management structure, resolving disputes, defining the exit strategy, establishing confidentiality, providing marketing and manufacturing specifics (if applicable), indemnifying each party against potential losses, determining return on capital, outlining accounting procedures, specifying insurance coverage, addressing unforeseeable events, ensuring severability of clauses, defining the relationship between the parties to avoid an employer- employee relationship, determining the composition of the board and the nominees allowed by each venturer, and specifying the rights of shareholders.

These clauses provide clarity and structure to the Joint Venture agreement, and it is essential that they are included and well- defined.

(A) Indemnity

Indemnity is an important aspect of any joint venture agreement as it helps to allocate the risk and liability associated with the joint venture between the co-venturers. In a joint venture, indemnity refers to the obligation of one co-venturer to compensate the other for any losses, damages, or liabilities that arise as a result of the joint venture.

The indemnity clause in a joint venture agreement specifies the circumstances under which indemnification is required, the extent of the indemnification obligation, and the process for making a claim. Typically, the indemnity clause covers losses arising from breach of the joint venture agreement, infringement of third-party rights, and non-compliance with applicable laws. It is important for the co-venturers to clearly define the scope of the indemnity and the limits of liability in the joint venture agreement. This will help to minimize the risk of disputes and ensure that the co-venturers are aware of their respective indemnification obligations. Additionally, it is recommended that the co-venturers obtain adequate insurance coverage to mitigate the risk of losses and liabilities.

Therefore, the indemnity clause plays a crucial role in protecting the interests of the co-venturers and ensuring the success of the joint venture.Indemnity is a concept where a party is compensated for any loss incurred during a specified activity at the request of the indemnifier or under other terms specified. This may also refer to an exception from liability for damages. In India, indemnity is regulated by Section 124 of the Indian Contracts Act, which is limited to actions arising from human conduct only. Insurance, though usually indemnity, falls outside this section and has its own clauses and acts. In the context of Joint Ventures, indemnity may extend to damages arising from negligence, wrong information, or failure to fulfill contractual obligations, not limited to the parties themselves but also their employees and agents. The indemnity clause may use the term "hold harmless" to indicate that the party will be indemnified. The party need not suffer actual loss before calling upon the indemnifier to indemnify losses, as long as the liability is absolute.[18]

(B) Force Majeure

Force majeure is a legal term that refers to unforeseeable and uncontrollable events that prevent the fulfillment of contractual obligations.[19] In the context of a joint venture, force majeure clauses are included in the agreement to define the rights and responsibilities of each party when unexpected events occur. In a joint venture agreement, force majeure events can include natural disasters, acts of terrorism, war, strikes, government regulations, and other events beyond the control of the parties. The force majeure clause typically outlines the conditions that must be met for the clause to be triggered, such as the event being unforeseeable or unavoidable, and the steps the parties must take to mitigate the effects of the event. The force majeure clause can also outline the consequences of a force majeure event, such as the suspension of the obligations of the parties or the termination of the joint venture agreement. The clause may also specify the allocation of costs and risks associated with the force majeure event.

It is important to carefully draft and negotiate the force majeure clause in a joint venture agreement to ensure that the parties are protected in the event of unexpected circumstances beyond their control. Contracts are typically made with the expectation and commitment of fulfilling them, but occasionally unforeseeable circumstances arise that make performance impossible. This can happen in situations known as Force Majeure, which refers to a significant force that is uncontrollable and unpredictable by human means. Examples of Force Majeure

[18] Gajanan Moreshwar Parelkar v Moreshwar Madan Mantri, AIR 1942 Bom 302,304.

[19] force majeure, LII / LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/force_majeure (last visited Apr 20, 2023).

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events include, but are not limited to: natural disasters, war, strikes, governmental actions, and pandemics. In such cases, the affected party may be released from their contractual obligations, provided that the Force Majeure clause was included in the contract and covers the specific event that has occurred.[20]

Contracts are usually created with the intention of fulfilling them, but sometimes, certain unforeseeable circumstances beyond human control can make it impossible to do so. Such situations are referred to as Force Majeure, which is a great force that is unstoppable and unpredictable by any human action. These circumstances include but are not limited to war, fire, earthquakes, riots, floods, prolonged shortage of energy, epidemics, hurricanes, trade embargos, typhoons, strikes, lockouts, explosions, terrorism, and civil commotion.

Force Majeure clauses are included in contracts to account for circumstances that are beyond human control and can make it impossible to fulfill the obligations of the contract. To claim

Force Majeure, the act causing the impossibility must be unforeseeable and entirely outside of the defaulter's control. When such an event occurs, the consequences may include the suspension of work, termination of the contract, or an extension of time for the affected party to perform their obligations. If work is suspended, the parties should minimize losses and wait for the block to be removed. If the contract becomes impossible to complete, it may be terminated and the losses borne by the parties in pre-agreed ratios. Alternatively, the clause may provide for an extension of time to the defaulting party to perform their obligations. Section 56 of the Indian Contracts Act addresses frustration of contract due to external factors subsequent to its creation.

While most types of insurance can be classified as indemnity, it is still important to include an insurance clause in contracts. This is because indemnity only covers the actions of the parties, their agents, and employees, and does not extend to external actions due to limitations in the Indian Contract Act. The insurance clause will outline which party is responsible for obtaining specific types of insurance and what will be covered. The most commonly procured types of insurance include accident insurance for vehicles, insurance against fire, riots, and other unforeseeable events, and workers' compensation insurance to cover accidents in the workplace. Additionally, general liability insurance can be obtained to cover contractual liability, but it will not cover liability imposed by law.[21]

[20] Contract Standards, Force Majeure, CONTRACTSTANDARDS, (March. 23, 2023, 21:49), https://www.contractstandards.com/public/clauses/force-majeure

[21] D.O Sabay & J.L Fingarson, Indemnity and Insurance Clauses in Joint Venture, ALBERTA LAW REVIEW, Vol. VIII, at 210

(C) Insurance

In a joint venture, insurance is an important aspect that needs to be taken into consideration.[22]The parties involved in the joint venture need to identify and manage the risks associated with the business venture. Insurance is a tool that can be used to mitigate some of these risks. The joint venture agreement should include a clause that specifies the types of insurance that the parties need to have in place. This could include property insurance, liability insurance, and business interruption insurance. The agreement should also specify who is responsible for obtaining and paying for the insurance. The parties may choose to obtain separate insurance policies or a joint insurance policy that covers all parties. If separate insurance policies are obtained, the joint venture agreement should specify the extent of coverage and the limits of liability for each party.

It is important for the parties to review and update their insurance policies regularly to ensure that they are adequate and up-to-date. Any changes to the business venture may require changes to the insurance policies. The insurance clause would lay down the specific details of the insurance policies and their coverage, including any limitations or exclusions. This ensures that both parties are aware of what is covered and what is not, which can help avoid any disputes or misunderstandings in the future. The clause may also require that proof of insurance be provided by the insured party to the other party as evidence of compliance with the insurance requirement.

(D) Principal Place of Business

The principal place of business in a Joint Venture refers to the primary location where the business is conducted.[23] It is the main office or the central place from where the operations of the Joint Venture are managed. The Joint Venture agreement should specify the principal place of business, which may or may not be located in the same place as the registered office of the Joint Venture. The agreement should also outline the rights and responsibilities of each co-venturer with respect to the principal place of business, such as the obligation to maintain the office, the costs associated with its upkeep, and the rights to access the office space. It is essential to establish the principal place of business in a Joint Venture agreement to avoid confusion and ensure that the co-venturers are on the same page regarding the management and administration of the Joint Venture.

[22] Need for Insurance in Joint Ventures' <https://legamart.com/articles/need-for-insurance-in-joint-ventures/> accessed 13 April 2023.
[23] 'Principal Place of Business | Wex | US Law | LII / Legal Information Institute' accessed 13 April 2023.

It is a principal place of business where a business is managed and operated from, and it typically houses the company's executive officers, management team, administrative staff, and accounting records. It can also serve as the registered office for legal purposes, such as receiving legal notices, service of process, and other official documents. It is defined under Section 2(89) of the GST Act.[24] A principal place of business should be a permanent or fixed location that is not changed frequently, and where significant business activities are carried out. This location is typically the primary address where business records, financial statements, and legal documents are maintained. It is important to have a principal place of business as it helps establish jurisdiction, determine tax liability, and provide clarity on where the business is headquartered.[25]

While there is no hard and fast rule on determining the principal place of business, it is important to have it clearly defined in the Joint Venture agreement to avoid any disputes or confusion. It becomes particularly important for legal and tax purposes, such as determining the jurisdiction where lawsuits can be filed or where tax returns should be filed, as you mentioned.

(E) Exit Strategy

Exit strategy refers to a plan developed by a business owner or investor to sell or dispose of their investment in a company.[26] In the context of a Joint Venture, exit strategy refers to the ways in which the co-venturers can exit the Joint Venture when their objectives are met or when the specified time limit expires. The exit strategies can range from an initial public offering, liquidation, or third-party sale. These strategies are usually decided in advance and included in the Joint Venture agreement.

Joint ventures are usually formed with a specific purpose or goal in mind, and once that purpose is fulfilled, the joint venture may come to an end. There are several ways in which a joint venture can be terminated:

Expiration of the joint venture agreement: The joint venture agreement may have a specific end date or may expire once a certain goal is achieved.

Mutual agreement: The parties may agree to terminate the joint venture by mutual consent.

Breach of contract: If one party breaches the terms of the joint venture agreement, the other party may terminate the joint venture.

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[24] The Central Goods and Services Act, 2017, No. 12, Acts of Parliament, 2017.
[25] Thakur Kuldeep Singh v Union of India, AIR (1986) Delhi 56.
[26] trategy - an Overview | ScienceDirect Topics' <https://www.sciencedirect.com/topics/economicseconometrics-and-finance/exit-strategy> accessed 13 April 2023.

Bankruptcy or insolvency: If one of the parties becomes insolvent or goes bankrupt, the joint venture may come to an end.

Change in the law: If there is a change in the law that makes it impossible or illegal to continue the joint venture, it may be terminated.[27]

The exits may range from a liquidation to a public offering. The various Exit Strategies are:

1. ***Initial Public Offering***

An initial public offering is the offer of the sale of the shares of a company for the first time. It can be used as an exit strategy for all the co-venturers or for some of them. The Initial public offering may be of fresh capital or a sale of the shares of the shareholders who are leaving or both.

The primary law that governs Initial Public Offerings in India is the SEBI (ICDR Regulations) of 2009,[28] The option of an Initial Public Offering (IPO) may be provided in the Joint Venture agreement, but it is not triggered unless the co-venturers feel that the Joint Venture is ready to face an IPO. Once they decide to go for an IPO, the primary law that governs Initial Public Offerings in India is the SEBI (ICDR Regulations) of 2009, and the listing agreements of the various stock exchanges where the shares are proposed to be released. The Companies Act of 2013 also contains provisions related to IPOs.

2. ***Liquidation***

Liquidation[29] is a time-consuming process, especially in India, where the legal formalities can take a long time. A Limited Liability Partnership (LLP) is a better alternative as it offers a quicker and easier way to dissolve a business. LLPs are a popular form of business structure in India and offer several advantages, including separate legal entity status, limited liability protection to partners, and easy transferability of ownership. Dissolving an LLP is a much simpler and quicker process compared to liquidation of a company.

3. ***Third party sale***

It involves selling the entire business to a third party buyer who is interested in entering the market or expanding their existing business. This type of exit strategy can often result in a higher return on investment for the co-venturers, as they may receive a premium for selling a fully

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[27] Joan N. Hayden & John L. Sullivan, Beginning with the End in Mind: Exit Mechanisms in Joint Venture Agreements, (March. 23, 2023), https://cdn.ymaws.com/acrel.site-ym.com/resource/collection/95D55D5F-5F29-4C41-B78C-F9C7A8C4D34F/Sullivan_-_Joint_Venture_Exit_Strategies_-02092017.pdf

[28] Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

[29] Lubinisha Saha, The Concept of Liquidation/ Winding up in India, INTERNATIONAL CORPORATE RESCUE, Vol 2, Issue 6, http://www.chasecambria.com/site/journal/article.php?id=64.

functional and established business. Additionally, it can provide a quicker and more efficient exit compared to other methods, such as an IPO or liquidation.

(F) Resolution Of Disputes

Disputes can arise in any relationship, including business partnerships. When it comes to joint ventures, it is important to have a well-drafted dispute resolution clause in the joint venture agreement. A dispute resolution clause sets out the process for resolving disputes that may arise between co-venturers. It typically specifies the jurisdiction or legal system that will govern the dispute, as well as the process for resolving the dispute, such as arbitration, mediation, or litigation. In the case of joint ventures involving parties from different countries, it is particularly important to have a well-crafted dispute resolution clause. This is because it can help to avoid jurisdictional conflicts and ensure that any disputes are resolved in a fair and impartial manner. Ultimately, having a well-drafted dispute resolution clause in the joint venture agreement can help to prevent disputes from escalating and ensure that any disputes are resolved in a timely and efficient manner. The various dispute resolution mechanisms are:

1. Governing Law and Jurisdiction

The jurisdiction of the applicable law is an important aspect of any contract, as it determines the laws and regulations that apply to the parties involved. In the case of international joint ventures, the parties may come from different countries with different legal systems, which can make the selection of jurisdiction particularly important. It is also important to consider the enforceability of the chosen jurisdiction's laws and the practicality of resolving disputes in that jurisdiction. In the case of India, while the courts may be slow, some parties may prefer to resolve disputes in India because of the strength of its legal system and its growing importance in the global economy.

2. Arbitration

The Arbitration and Conciliation Act, 1996 is the primary legislation governing the law of arbitration in India. The Act provides for the conduct of arbitral proceedings, the enforcement of arbitral awards, and the setting aside of arbitral awards under certain circumstances. The Act also provides for the appointment of arbitrators, the determination of the scope of the arbitration agreement, and the procedures to be followed by the arbitrators. Arbitration is a popular method of dispute resolution in India, especially in the commercial sector, and its popularity is increasing due to the speed and efficiency with which disputes can be resolved through this mechanism.[30]

(G) Confidentiality and Non-Compete

A non-compete clause is often included in the confidentiality clause to protect the interests of the parties involved.[31] It prevents one party or its employees from engaging in any activity that may directly or indirectly compete with the Joint Venture during the term of the agreement and for a certain period of time thereafter. This clause helps to prevent any misuse of confidential information or unfair competition, which can negatively affect the business interests of the Joint Venture partners. The usual types of subclauses are:

1. *Definition of confidential information*

The confidentiality clause should define what information is considered confidential under the agreement, and typically, it would include any non-public or proprietary information that is disclosed or obtained by the parties during the course of the Joint Venture. However, it is important to note that the definition of confidential information may vary depending on the specific context and nature of the Joint Venture.

2. *Limit to Disclose*

The confidentiality clause should specify the scope of what can and cannot be disclosed by the parties, and any limits or restrictions on the use of the confidential information. This helps to ensure that the parties only use the confidential information for the purposes of the joint venture, and do not disclose or use it for any other purpose without the express permission of the other party.

3. *Legal Obligation to Disclose*

The clause regarding legal obligations to disclose is important because there may be instances where a party is legally compelled to disclose confidential information, such as by a court order or regulatory requirement. In such cases, the party should give notice to the other parties and provide them with an opportunity to take any necessary action to protect their interests. This can include seeking a protective order or challenging the disclosure requirement in court.

4. *Copies*

This clause is intended to limit the amount of confidential information that can be duplicated or disseminated, thereby reducing the risk of a breach of confidentiality. It also ensures that any

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[30] The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996.

[31] 'Confidentiality, Non-Solicitation and Non-Compete Agreement' <https://www.sec.gov/Archives/edgar/data/1077183/000119312514363389/d799884dex102.htm> accessed 13 April 2023

copies made are necessary for the legitimate business purposes of the Joint Venture.

5. *Exceptions*

A non-compete clause is often included in a Joint Venture agreement to prevent any unfair competition between the parties involved. This clause typically restricts a party, or an employee of a party, from engaging in any activity that would compete with the interests of the Joint Venture or the other parties involved, for a specified period of time. The duration and scope of the non-compete clause can vary depending on the nature of the Joint Venture and the industry involved.

(H) Limitation of Relationship and Liability

The purpose of such a clause is to clearly define the relationship between the parties as a joint venture, and not an employer-employee relationship.[32] This helps to avoid any confusion or legal complications that may arise in the future. Additionally, by stating that each party is personally liable for any losses incurred by them, their agents and their employees, it establishes a clear limit to liability, thereby protecting the interests of both parties. It is important to clearly define the status of any contractors, employees or agents involved in the joint venture to avoid any confusion regarding their status and responsibilities. Overall, this clause helps to protect the interests of both parties by clearly defining the nature of their relationship and limiting their liability.

(I) Severability

Severability clauses are important because they help to ensure that if one part of a contract is found to be unenforceable or invalid, the rest of the contract can still be enforced.[33] Without a severability clause, the entire contract could be at risk of being invalidated if just one part is deemed unenforceable. Typically, the first part of a severability clause provides that if any provision of the agreement is found to be unenforceable, the remaining provisions will continue to be enforceable. The second part of the clause provides guidance on how the parties will deal with the unenforceable provision, such as by modifying it to make it enforceable or removing it altogether.

In the case of *D. S. Nakara* v. *Union of India,* the Supreme Court of India applied the doctrine of severability to salvage a part of the contract. The court held that even though a part of the

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[32] Limitation of Liability in International Maritime Conventions: The Rel' <https://www.routledge.com/Limitation-of-Liability-in-International-Maritime-Conventions-The Relationship/Gutierrez/p/book/9780415813228> accessed 13 April 2023.

[33] 'Severability Clause' (LII / Legal Information Institute) <https://www.law.cornell.edu/wex/severability_clause> accessed 13 April 2023

contract was found to be invalid, the rest of the contract could be enforced, as it was severable from the invalid part. This case is an example of how the doctrine of severability can be used to save a contract from being completely unenforceable,[34]

(J) Rights of Shareholders

The shareholders' rights clause of the Joint Venture agreement will determine which of these rights are available to the shareholders and in what situations they can be exercised.[35] It is important to carefully consider and negotiate these rights to ensure that they are fair and reasonable for all parties involved.[36] Some of these rights can be construed as unfair to the outsiders who want to enter the Joint Venture. The rights are:

1. ***Pre-Emptive Right:***

The pre-emptive right allows the existing shareholders to maintain their proportionate ownership in the Joint Venture by purchasing new shares before they are offered to any third parties. This can make it difficult for outsiders to enter the Joint Venture, as the existing shareholders have the right to block their entry by exercising their pre-emptive rights. It is a way for the co-venturers to ensure that they retain control over the ownership and direction of the Joint Venture.

2. ***Right of First Refusal***

This right gives a shareholder the right in a situation wherein a shareholder intended to sell their shares, the other shareholder has to refuse the shares before they can be bought by the third party. This right exists provided that the refusal is for the same terms that were offered to and accepted by the third party.

3. ***Right of First Offer***

In the Right of First Offer, the shareholder who intends to sell their shares first offers them to the other shareholder(s) at a price determined by the seller. The other shareholder(s) then have the right to accept or reject the offer. If they reject it, the seller can then offer the shares to third parties. This right gives the offeree more flexibility in deciding the price at which they want to buy the shares compared to the Right of First Refusal, where the price is usually already determined by a third party offer.

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[34] 1983 AIR SC 130.

[35] Shareholder Voting Rights and Meeting Role' <https://www.cfainstitute.org/en/advocacy/issues/shareholderrights> accessed 13 April 202

[36] LexisNexis, Joint Venture Agreement – Overview, LEXIS PSL, (Sep. 23, 2018, 22:16), https://www.lexisnexis.com/uk/lexispsl/corporate/document/391387/5BYD-FJ01-F186-H0J4-00000-00/Joint_venture_agreements_overview

4. Right to Tag Along

The right to tag along ensures that a minority shareholder is not left behind when the majority shareholder decides to sell their shares to a third party. It allows the minority shareholder to sell their shares on the same terms and conditions as the majority shareholder, thereby protecting their interests. This right is also known as the "co-sale" right.

5. Drag-Along Right

The shareholders' rights clause of the Joint Venture agreement should specify which of these rights are available to the shareholders and under what circumstances they can be exercised. It is important for the parties to carefully negotiate and draft this clause to ensure that the rights granted to the shareholders are fair and reasonable, and that they balance the interests of the existing shareholders and potential new investors.

VII. CONCLUSION

In conclusion, Joint Ventures have become increasingly popular in India, offering numerous benefits to businesses. However, the success of a Joint Venture largely depends on the terms of the Joint Venture Agreement. Understanding the various contractual clauses involved is crucial for drafting effective agreements that protect the interests of all parties involved. Key contractual clauses that need to be included in the agreement include management and control clauses, confidentiality clauses, non-compete clauses, termination clauses, and shareholders' rights clauses. Additionally, incorporating a severability clause is important to ensure that the enforceable clauses of the contract are saved in case of unenforceability of a clause. It is also important to comply with Indian commercial laws when drafting Joint Venture Agreements to avoid legal issues. Seeking legal advice can help businesses ensure that their contracts are valid, enforceable, and comply with all legal requirements. Ultimately, effective Joint Venture Agreements can provide businesses with opportunities to leverage resources, access new markets, and diversify operations while minimizing risks.

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