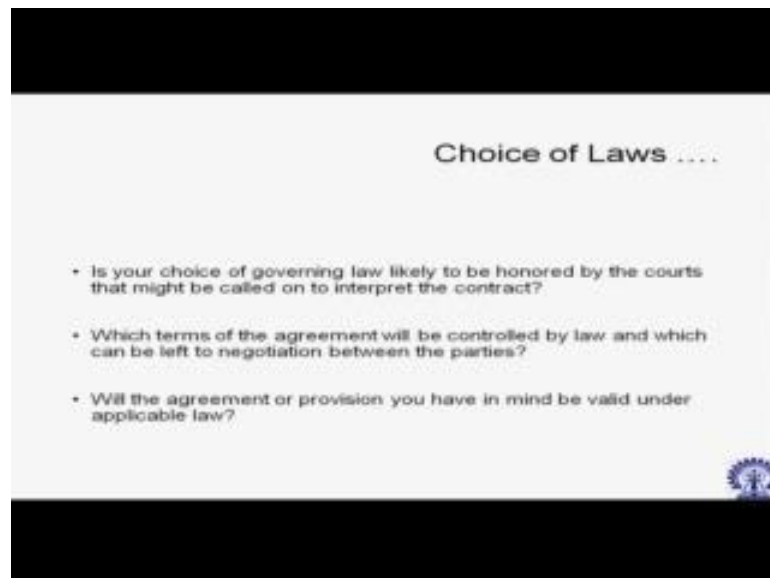


**Technology Transfer through Joint Venture**  
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**Lecture – 10**  
**Governing Laws in Cross-Border Transaction**

I welcome you in my 10th lecture regarding technology transfer through strategic alliance and the joint venture, and I am in the model called joint venture. In these talks I will concentrate more on governing laws in cross border transactions.

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So, if your partner is from the foreign country and you are interested to enter into a joint venture agreement, you should carefully consider some of the issues relating to the choice of laws.

Like the first question and I in these particular talks I am basically frame some of the questions, and I am going to address these particular questions to make you understand that how you should choose the law or you should look into the law you to decide that how you are going to frame your joint venture agreement. Now the first question which I put it here is, is your choice of governing law likely to be honored by the court that might

be called upon to interpret the contract. Now if tomorrow any dispute arises between you and joint venture partner, then in that case which court you are going to solve this particular dispute?

Is it that you are going to solve this particular dispute by your mutual understanding or appointing the arbitrator and if you are appointing the arbitrator, under which law you are appointing this particular arbitrator? And at this some time if you are interested to litigate beyond the jurisdiction then in that case in future you are going to do the same. Let me give couple of examples, so you can understand this think better.

Now, you are entering into a joint venture with a company, which is based in London and they are not very confident about the Indian law. So, what this say that well for the purpose of this particular joint venture, we are going to adopt the Singapore law and if there is a dispute arise in the future, then in that case will submit before the Singapore court or the arbitration in the Singapore. Now you have adopted this kind of agreement sitting in India and then in future there is a dispute arises.

Now, when you go before the Singapore court and say that see you wanted to adjudicate this particular problem in your court. Singapore court might be question this particular issue that, where this particular contract is concluded? and you say that we have concluded this particular contract in Delhi. Then it might. so happen there Singapore court might not entertained this kind of contract to resolve the disputes. So, in that circumstances do you have jurisdiction of the Indian court? or do you have a jurisdiction of the UK court? Then actual answer is that yes, you might have a jurisdiction of Indian court because the contract is concluded in Indian so on.

But when you have drafted the contract, you have not drafted the contract according to the Indian contract act, but you have drafted the contract according to the Singaporean law. So, this might create a problem for you. So, you should be sure about that if you are adopting a particular jurisdiction law, and if you want to submit in that particular jurisdiction your dispute will entertain your dispute or not? The second question which I framed here is which terms of the agreement will be controlled by the law and which can be left for the negotiation between the parties?

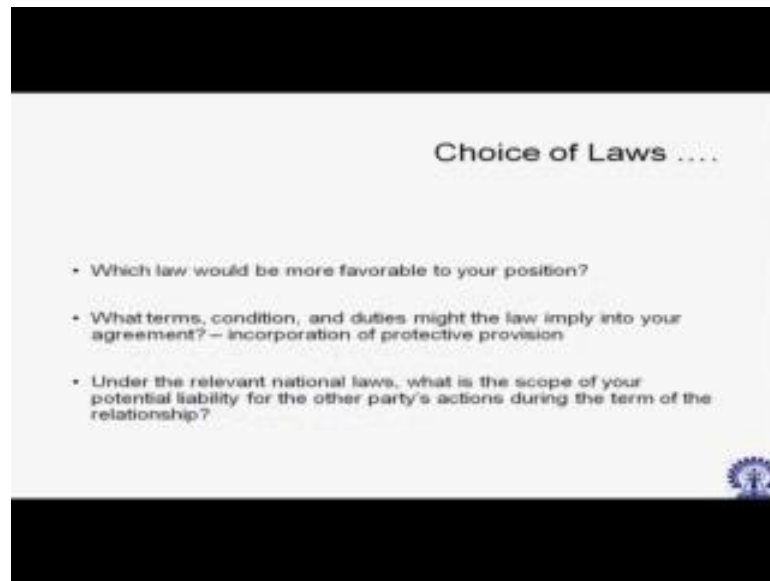
Now, the foreign investment is a quite important process in a particular country. So, how much will be allowed to be invested in the domestic market? What should be the right of withdrawal in the market value you have invested by the foreign company? What is the duration they should continue their investment? In what are the modes they can withdraw their investment? How or in which instrument they can bring that particular investment? These things may not be negotiable terms in a joint venture.

Because in my last lecture I have told you that, there is a regulator in a particular market and there are also sectoral regulators who basically create terms or standardize these particular matters for the purpose of investment into the particular sector. So, my advice is that, before you go ahead for the negotiation in joint venture, you should do the legal due diligence regarding the terms of the negotiation or the check list of the negotiation or the key indicators of the negotiation. Because in some cases you are flexible and will negotiate and some cases law provides a very standard term which you need to add, if you want to go ahead with the joint venture agreement.

The next question is will the agreement or the provision you have in mind be a valid one under applicable law? Now joint venture is necessarily a management and strategic decision. Joint venture is not legal formalization. So, the manager may want a joint venture to take a particular step and to operate in a particular way, but that might not be allowed by the domestic law or the market in which you want to operate joint venture. Market might prescribe the controlling state, market might prescribe the type of investment, market might prescribe how and which kind of a manager might manage this particular venture.

So, what I say that, you know joint venture you have to operate within the boundary condition, which the applicable law provides to you. So, you need to have a clear understanding about this boundary condition and it is always advisable to have consulted with your consultant in this regard and to get a clear picture, before you decide particular operational mode or particular structure of joint venture.

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The next point which I concentrate upon is which law would be more favorable to your position like you wanted to enter in to market segment, where there is a no as such clarity or the operating law like you are wanted to enter into e-commerce details segment. It is in the recent year you will find there is a lot of regulation as been prescribed, but before that, the regulation in these particular segment was relating to FDA regulation in these particular segment was relating to retail marketing, but there was a nothing relating to the e-commerce in retail or investment in e-commerce.

So, at that scenario where you will find these a vacuum what there is some gap and there is a regulatory frame work available for some other segment, which might be interpreted for this particular segment. You should take expert advice and to find out that which law is favorable for you about the business or the joint venture you wanted to enter upon. The next question which I frame is what terms, condition and the duties might the law imply into your agreement.

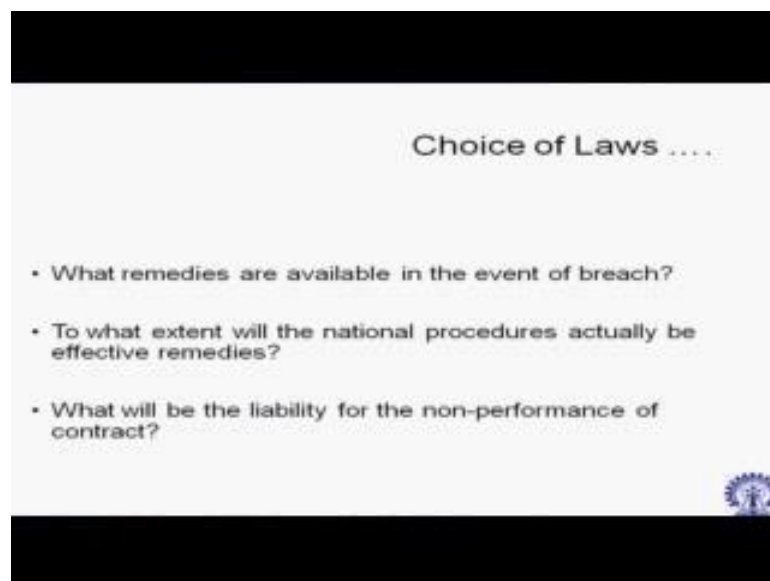
Now, sometimes law prescribes the liability for the holding company or the partner who has invested into a joint venture. So, if you are became liable for the action of your partner, then you need to find the adequate protection or he is the risk which you might have in that particular business and which you generally call as a protective provisions.

So, you need to find out that what are the liabilities you will be exposed of? What are the potential leagues which will be exposed of because of the regulated frame work? I am not talking about the business risk here, but I am taking about more of a regulatory risk which is coming due to the business processes and then you should take a protective provision or you should negotiate on the protective provision with your partner.

Next is under the relevant national laws, what is the scope of your potential liability for others parties action during the terms of the relationship? So, this is somewhere similar then what I have discussed the previous one, but in some of the cases this is quiet explicit like if you look into the environmental legislation, you will find that these particular provisions are quiet explicit because they said whoever is in charge of the operations he will be responsible.

So, if it is that your joint venture partner he is doing some particular work then in that case you might get the responsibility under that you know environmental legislation. Similarly it can be under some financial loss also. So, you need to be careful in handling these particular issues.

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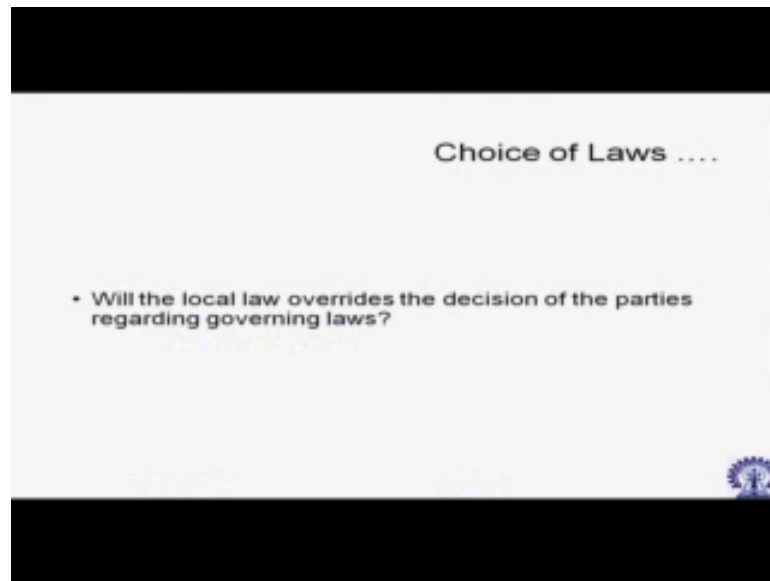
Now, the next issue which you concentrate on is what remedies are available in the event of the breach? Because in some jurisdiction the enforcing the contract and getting the appropriate remedy for breach of contract by your partner is very difficult, or it may be a time consuming, or it may be very inefficient remedy which you generally get out of that particular (Refer Time:15:43).

Even if you get the remedy, but enforcement of that particular remedies very difficult. So, you should be aware of this particular fact and you see that how you can design the agreement or the contract which will favor or which will give the protection in those circumstances. Now next thing we should keep in mind is to what extent will the national procedures actually be effective remedies? So, what kind of effective remedies you might get in this particular national procedure?

Now, in the business it is not necessary that you will get a effective remedy by the judicial dispute, or settling the disputes to the judicial means, there might be many other way to settle the issues and that might be kind of a regulatory remedies. That might be the special treatment which you might get because of the foreign investment. That might be remedy which is available in the customer trade practice. So, you need to understand that what is the kind of remedies which is available around you and even sometimes you might get the remedy by quick exit in the business.

So, you should be aware of this particular fact that, what kind of a remedies you might avail if this particular if you could not continue with your partner or if the venture fails. Then what will be the liability for non performance? This is also quite important. So, you might even breach the contract and the cost of breach will be lesser than the cost of continuation. So, even sometime breaching the contract is one of the good strategies for the business. So, if that is so, then in that case you should be careful and you should assess this particular option two.

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And the last one is will the local law override the decision of the parties relating to governing laws? Now, which I have started with that, you might choose the law of other jurisdiction. So, you have decided consistently that you are not going to be governed by the local laws, but you are going to govern by the other laws, the laws of other jurisdiction. But sometimes local law prescribe it very clearly that, for some specific purposes even if you are governing by the foreign laws, you will be subjected to the local laws. It might be relating to your level loss or social security. It might be relating to the environmental loss, it might be relating to the mining and the forest laws.

So, sometime the local laws over ride these governing laws which you have consistently adopted. So, in those particular circumstances you should be sure that, what will be consequences of these local laws? What will be the consequences if you are subjected to the local laws and how you have to handle that particular scenario where you are subjected to these particular local laws?

So, in these particular talks I wanted to make you consist about the choice of law and let me put it like this, the choice of law is also one of the strategy in case of the joint venture. Sometimes efficient choice of the law is make your venture successful and

sometimes even neglecting or not taking some of the legal mandate seriously might bring down your joint venture operation.

Thank you.