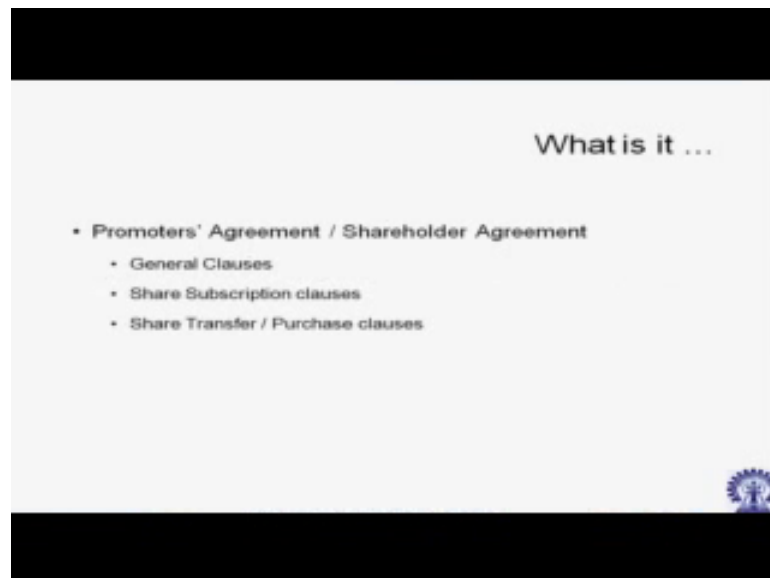


Technology Transfer through Joint Venture
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Lecture – 14
Shareholder Agreement in Joint Venture

I welcome you in 14th lecture regarding technology transfer through strategic alliance and joint venture, and I am discussing with you relating to the joint venture agreement and more specific in these talks I will concentrate on shareholder agreement in joint venture.

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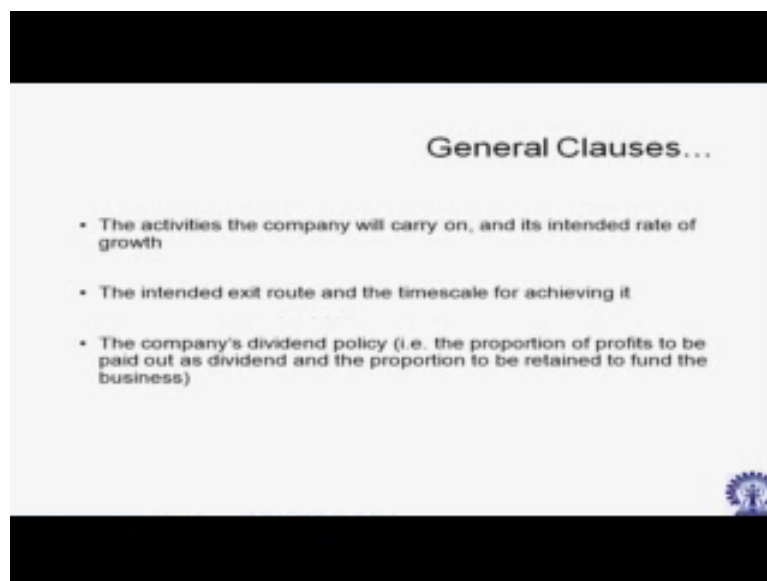
Now, what is this shareholder agreement? In my previous lecture also I have touched upon this particular issue relating to the promoters agreement and shareholders agreement. Promoter and shareholders agreement is a heart of any joint venture agreement, because please remember the ownership pattern of a joint venture form or organization determined by this shareholder agreement only. It actually have a snowballing effect on the control over the management, it has a snowballing effect over the business plan, it has also effect on the governance of the joint venture. So, from that particular perspective promoter's agreement or shareholders agreement are very very important.

Now, I am talking these two concept together promoters and shareholders. Now in some

of the cases people use the word promoter mainly in those circumstances when they want to promote a particular incorporated body and in some circumstances people use it shareholders agreement. So, there is a no as such word or type you know understanding about these two concept rather, people use it interchangeably and people use it to some extent bit loosely on these particular issue. So, either you can use the word shareholder agreement or you can use the promoter's agreement. Now as I have told in the past lecture that you can put the shareholder agreement or promoters agreement as a part of the (Refer Time: 03:19) agreement or it should be a part of your joint venture agreement itself.

Now, in this shareholder agreement you generally write on some of the general issues then you go into some specifics, like share subscription process, then you talk about the share transfer and purchase clauses.

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So, I am going to take you through these particular process one after another to give you a understanding that while you are framing these particular clauses or the conditionalities how and what are the things you should keep in your mind. Now, in the general clauses you need to talk about the activity the company will carry or intended rate of the growth. Now when we are talking about the business plan I have talked with you relating to the scope of business.

Now, in fact, these particular point and the scope of the business will almost similar in

nature, but here in you need to further talk about the governance issues to a certain extent because ownership is related to the governance and the rate of the growth because again you have to decide that who is going to make an investment, again the investment is related with the ownership of the form which is going to come, or if you are looking for a external investment then also you need to have a consent from the owner for that particular external investment. Now, that next important thing is that you need to decide upon the time scale of these joint ventures subsistence and if there is a exit route how, when, what procedure you should apply.

In the last lecture I was talking with you relating to technology transfer and I was talking about the payment method, I was also talking about if the stake of joint venturers coming down then what will happen in those particular circumstances. So, the business plan even in the technology transfer is closed related with the ownership pattern and shareholders agreement. So, the moment you are diluting your stake, the moment you are diluting your ownership there is again a snowballing effect on the different aspect of the joint venture.

Similarly, you need to talk about the dividend policy. I have talked with you in the last lecture that you should have a mechanism implies relating to distribution of the dividend. It might so happen that you want to retain a portion of the profit with the joint venture company and remaining you wanted to distribute and while you are distributing you might have again some of the issues relating to payment of royalty or some of creators or some of the other issues which might be involved into this. So, this you need to decide and put a process in place. Let me explain to you for your better understanding.

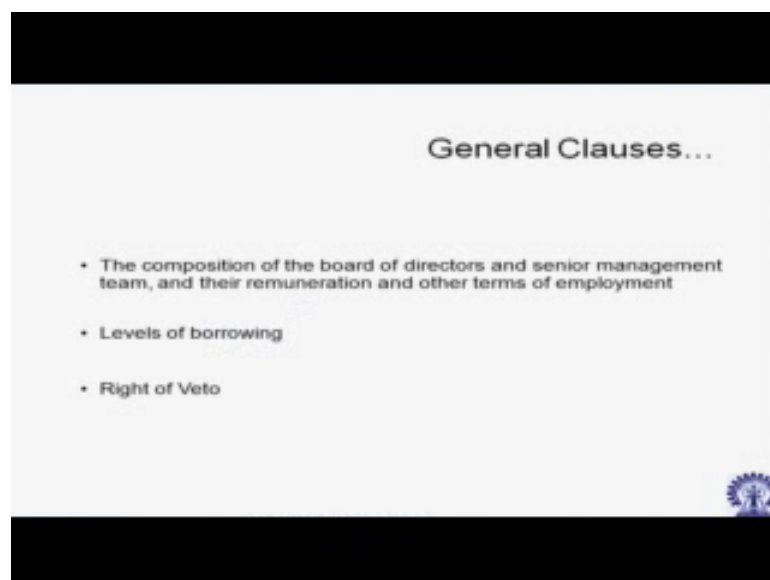
Now the partner who has brought the technology, you have decided to pay him interest on the debenture which you have issued to them, and what you did? You have actually issued them the fully paid venture. So, then in that case you should have a that how many years you will continue with the debenture and what kind of interest you are going to pay or you have decided that well the partner who has brought the technology you are going to issue the preference used to them.

So, then you have to decide what kind of preferences you will allot to them, is it a cumulative or non cumulative; that means, if it is a cumulative then in that case that partner is going to continuously get the dividend even if you have not declared, dividend

in a particular year. If it is a non cumulative then he do not get that particular dividend, he will only get whenever the dividend has been declared or you might decide that while you are going to issue a percentage of the equity place royalty you wanted to give to your partner who has contributed in the technology. So, you know what I am trying to drawing your attention that whatever the structure of the ownership you are going to adopt it will have impact over all other issues. As I have talked with you that it will have impact over the issues of the governance, I have discussed in detail relating to the governance in previous lecture.

So, it will give you a liberty that who will come in the boat, who will send how many representative in the boat, how the senior management will be selected elected or appointed. So, again as I have told you before that some of these issues might be governed by the organization law under which you choose to incorporate your organization, or sometimes even it might be operated through the agreement itself. Please remember which I have referred in my previous lecture as the management board. So, the construction of the management board has a very close relation with the ownership pattern of a joint venture organization then the joint venture might require some short of funding, working capital.

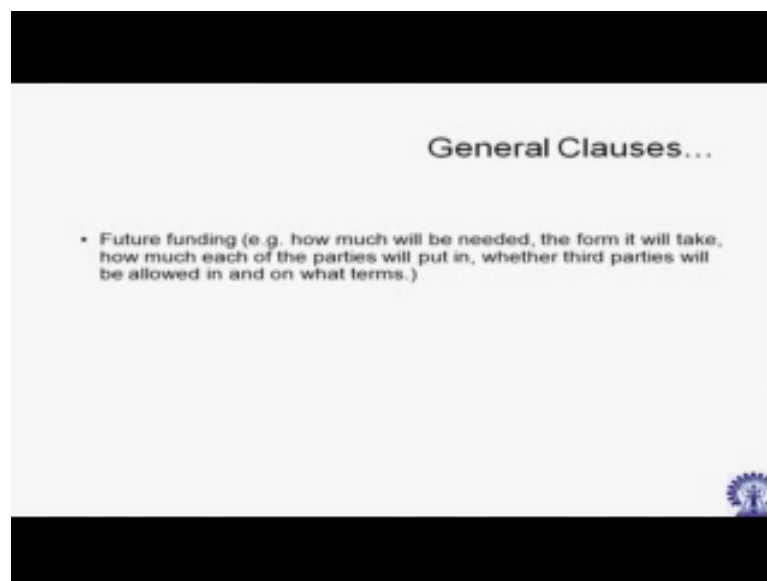
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Now, you need to specify that what kind of a borrowing the owners of or the venturer partner will allow, how much they are allow and under what condition they will allow.

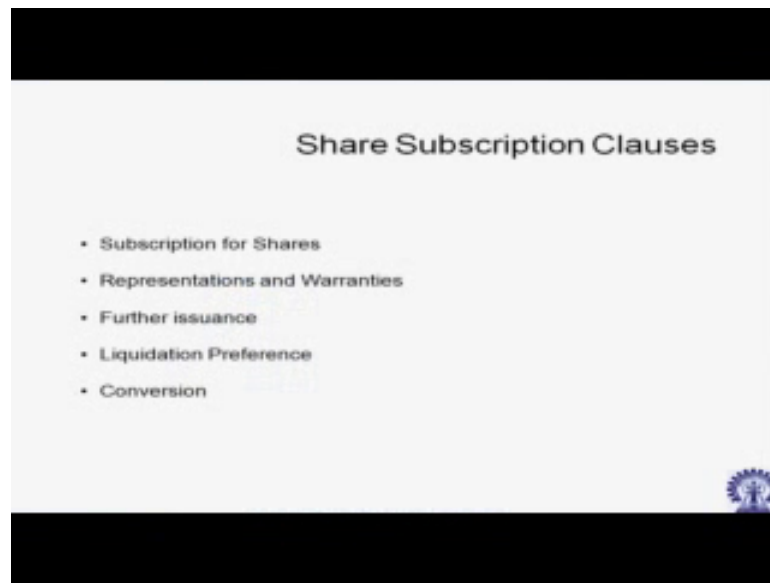
You possibly require to talk about right to veto, as I have talked with you in my previous lecture also that there might be some kind of objective difference between the partners who are promoting a joint venture. Some of the partner may be very aggressive in taking the risk and some of them might not be that aggressive in taking the risk in the business. So, in that circumstances there need to have kind of right of veto, but by either partner, while somebody wants to be very aggressive and not mutually agreed upon on a particular type scheme, it might be relating to the future funding.

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Now, if venture require a growth which I have discussed before by telling that the venture might be funded by the organization itself; that means, they can put for, they can invest the profit into the venture to address the growth, if that is not so you are wanted to go for the outside borrowing or outside investment then you need to policy in place that how much and in what terms and in what manner you will receive the outside fund. So, these general terms you need to agree upon as a part of the shareholders agreement or the promoters' agreement in general. Now let me take you to some other specifics like share subscription clauses, wherein you need to detail out the subscription of the shares.

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Now while you are talking about the subscription of the shares you might need to talk about what kind of shares you are going to subscribe. Now to distribute the rates you might make your total investment through the different-different instrument in a joint venture company, you might put some of the portion of your investment into the equity.

Remaining you chose to invest through the preference shares and the debenture or bonds or even the convertible adventures. You might have a subscription terms of subscription duration, you might a you know say that while I am going to make an investment in coming 5 years and the amount of the investment is on a particular based on particular amount. Similarly, you also need to spell out the representation and the warranties if there is any, you might keep the warranties that if tomorrow the joint venture will need some kind of a investment to address the growth or to penetrate the market either in terms of a working capital or short term capital you are going to bring that particular capital into the joint venture company, or even you might like to get this particular assurance from your other partner in the venture.

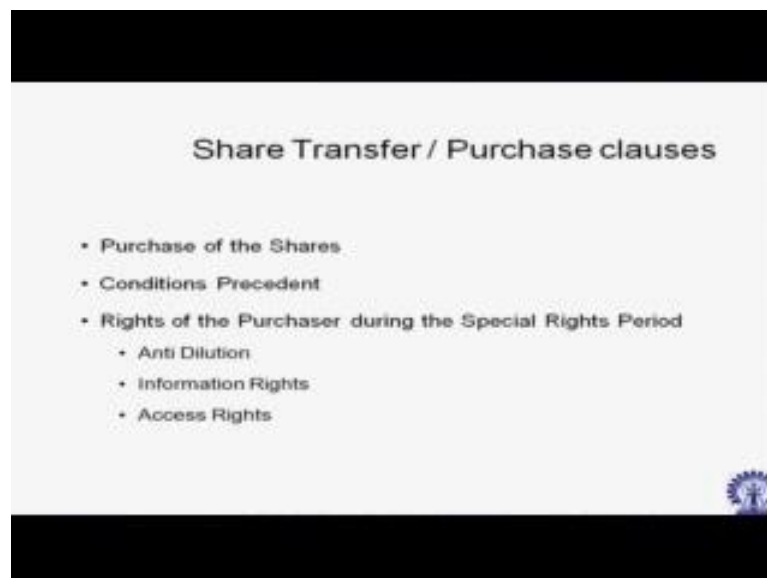
Now, you might have a provision relating to the further issue. If you are going for a further issue in what terms you wanted to go for further issue, what should be the post issue capital structure because in post issue capital structure your partner might be majority shareholders and you have become a (Refer Time: 17:42) shareholders or your partner keeps on allotting themselves shares which have been management rights or your

partner prefer to allot themselves a differential equity with a more managerial right. So, whatever you want to decide you need to have a clear agreement in place.

Then you know if there is a liquidity preference or the provision relating to the liquidity, in that circumstances whom to be offered, is it that your partner has a preemptory right over this or they can exercise a preemptory right. Because under the company's act you have a certain statutory right which you cannot violate in case of your partner. If it is a private limited company then your partner can exercise the preemptory right or if it is a public limited company again your partner can restrict the transfer or liquidation through the AOA - article of the association of the company. So, whatever the process you follow there should be some provision in place in the agreement itself.

Next is if you wanted to go for a conversion, like you have brought the capital through the debenture and how would the years you found that the company grown really, really well and company want to go for a public listing and before it goes for a listing you want to convert your debenture into the equity because you wanted to get a premium or better you know return on your investment then, if you want to do so you need to have a provision in place.

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Now, the next point which I wanted to talk with you relating to the share transfer and purchase clauses; you need to have some clauses relating to purchasing of the shares. Now, when you are structuring the joint venture there might be a condition that before

you make an investment into a joint venture company, you also need to make an investment into your partners company also or you think that that is more strategic for you to enter into the market.

So, you can have some clause relating to the purchase of the shares or you can have some clauses relating to the condition (Refer Time: 21:36); that means, you can prescribe that you need to do a b c d e f before you go ahead with the purchase of the shares. You can have a right of purchase during the special right period and that that might be you know narrated as anti dilution information right and access right. That means, within that particular special period you cannot dilute your stake, or your stake cannot be diluted by further issue of shares. So, you have a kind of protection in place, you have a right of the information. Now may be if you have become minority then, you might not exercise your right of information for different issues different information which are not available in public domain, so you can have a adequate provision relating to that.

Sometimes you need to have access right to some of the information which is otherwise not available in public domain; that means, you can go and look into the books of accounts and all other information which is relevant for the joint venture organization to go ahead. So, say that you have to have a process in place relating to shareholders rights, liabilities and the duties. Now please do remember, this is in addition to whatever has been prescribed under the companies act or the relevant legislation under which the joint venture organization has been incorporated.

Thank you.