**Technology Transfer through Joint Venture**
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**Lecture – 18**
**Disclosure to be made by SPV**

I welcome you in 18th lecture relating to Transfer of Technology through Strategic Alliance and Joint Venture and I am in the module of special purpose vehicle and this talk will be more concentrated around disclosure to be made by SPV.

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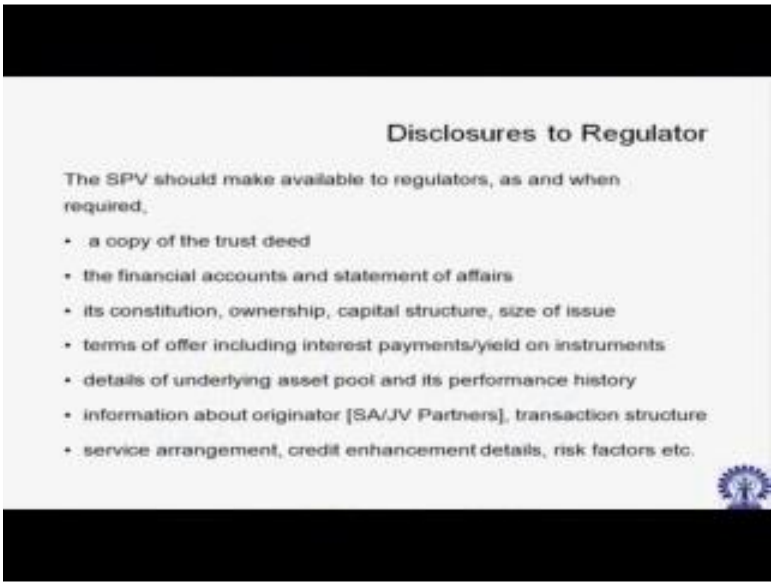


Now, I believe you remember whenever we are talking about the SPV, this is a business form which is incorporated or developed out of the joint venture or strategic alliance and I told you in my previous lecture that when I am talking about the SPV, I am basically indicating companies.

So, either this is a private limited company or a public limited company or it can be public listed company. Now, in case of the SPV, as this has became a separate organization than that of is promoted or the joint venture partner or strategic alliance partner, this particular new organization need to make a disclosure continuously to the regulator because this is a separate entity in the higher flow. Even though there is a substantial investment made by the joint venture partner or the strategic alliance partner in these particular SPV or this you know business form.

Now, there is a several regulator to whom you need to submit the different document or you need to make a disclosure in different time as for the requirement, sometimes you will find it is prescribed by the stature itself or sometimes you will find the regulated come up with the regulation or the rules time to time or even in sometimes they issue the guideline or even they can also issue the press note. So, whatever it is you need to respond to those particular notification and you need to keep the information on the regular basis to this particular regulator.

Now, in generally you might need to give a copy to the trust deed, trust deed in the sense if you know any trust has been created out of these particular SPV or SPV has been a form as a trust or if the SPV has been formed by the joint venture agreement or strategic alliance agreement and then it has been incorporated as a company, then in that case the formation document or memorandum or article of the association, you might require to give to the regulated.

Now, when I am talking about the regulator, you should remember that it is a number of people who might be informed into this particular regulated thing like you know if it is a foreign investment then in that case the RVI might come in to the picture or may be FIPB - Foreign Industrial Promotion Board. We will come into the picture or if this particular you know formation is like a public listed company then in that case the SEBI will come into the picture or if it is simply a private or a public invented company, then in that case the ministry of corporate affair will come into the picture.

Apart from that there might be sector regulated who might be the regulator in the particular sector and they require certain document, it might be the state government where you are operating or might be the local government, they might prescribe some of the document to be given. So, what I did in this particular case, I generally created generic list which you might require to give, but this is not the exhaustive list or this is not the end list or the final list in to this in, but it is just a indicative list.

Secondly, you need to give a financial account and statement of affair sometimes you know you need to give even the solvents statement that how far this particular joint venture he is doing well please remember which I am going to discuss with you a little later. Now, the government is insisting for you know more and more offset that means, where the comment is targeting a particular market to be developed and there in the technology should be transfer into those particular domains where the government wanted to develop that particular market and many of the time it so happened that not only the private players are coming as a joint venture partner even the government also making an investment into that particular partner.

In generally, this is popularly generally known as PPP model- partnership private public partnership. So, you know in those particular circumstances even the government might look for this particular you know information not as a regulated, but as a partner into the entire scenario. So, whatever it may I mean all the government even may asks for the solvents statement because government might be worried about the health of this particular joint venture because government wants to act as a sponsor and they wanted to address a particular issue through this particular joint venture.

Now, you need to give information relating the constitution ownership characterize and size of the issue. Now constitution I have told it is generally the formation document or memorandum article of the association then ownership structure is who is holding what the percentage of the equity into this particular joint venture; that means, if there is a number of joint venture partners are there, they might not bring the capital in a equal percentage. There might be a variation and what kind of a variation that it is you need to you know disclose many of the time.

Even sometimes you need to make this particular disclosure to the capital market regulated, if the particular company is a public listed company. Now, you need to talk about capital structure also; that means, you know what percentage of the capital is come from equity, and what class of equity you have basically issued or what percentage of the capital come from a preferential, and what class of a preferential as you have issued. If you have raised the money and through the debenture then in that case what kind of a debenture you have issued and to whom you have issued do the financial institutions has made an investment to in your company. Then further more you might to disclose about you know, if it is a convertible debenture then in that case what is the structure of the convertible debenture, and which will within which state it need to be redeemed.

Then you might require to spell out if you are taking the deposit and further more the interesting part of it that what is the arrangement relating to holding of this particular capital. That means, it might so happen which I have discussed with you previously that there is a some partner of this particular joint venture might like to dilute the stake and in that particular any one it is there then what is the time period and timeline with which they need to do that.

Now, terms of buffering including in the interest of the payment yield on the instrument. So, if you are having you know different kind of instrument then in that case you might need to talk about the terms of buffering. Now please do remember many of the time in case of the joint venture every everybody do not bring the cash, but they get the equity allotment, because they bring some kind which is relevant to the business.

Now, let me this explain to you, like you know your partner might bring a technology. So, as because he is bringing the technology he might not be interested to invest any single money into that particular joint venture. But in that case you need to allot the equity or different kind of you know securities whatever you have agreed upon in the joint venture to that particular person who has brought the technology. There might be person who might give the line to this particular joint venture company. And in that is circumstances you might need to give a kind of instrument or allot the instrument which you have agreed upon. Then, in that case you need to talk about the interest payment on those particular instrument or if you are want to make a dividend, or you wanted to you know issue the further fully paid capital to these particular you know partners then what is the arrangement and what norms you are going to do you need to spell it out.

You need to talk about underlined asset pool and it performances history; that means, you know mainly is in those particular case which are very technology intensive and in that circumstances you need to say that what kind of asset which you have created over these you know years when the joint venture is in operation. At the same time you might need to talk about the performance history; that means, you know how much you have created an impact in the market or what is the market capitalization of you know these particular joint venture. Is this market capitalization is somehow better than even he is promoted or the joint venture partners or the sponsorer, so all these particular things we need to make you know declaration.

Now please remember sometime even the regulated say that you need to go through the credit assessment. So, in that particular circumstances you need to go through the credit writing agencies who are going to asses based on the information which you disclose and then you possibly allowed to go for raising the further capital either from financial institution or from the public you know whatever it remains you deploy.

Now, you need to give sometimes information about the originator or joint venture or you know strategic alliance partner and what is the transaction of structure between them. Now this particular information is quite relevant for the share market regulated like you know if it is a completion commission, who is coming into the picture because your joint venture is so much sure that it might create a market concentration, or it might even create kind of imbalance into that particular existing market.

So, in that circumstances you need to give this information relating to the transactional structure because of this particular joint venture there is a new market structures and developed into that particular market. Further more you need to talk about the service arrangement, credit enhancement detail, and the risk factor etcetera. Because you know if you are looking for a public you know in mutation then in that case possibly you need to tell the people that what kind of a risks which is involved into these particular business.

At the sometime you have to talk about if there is a (Refer Time: 12:04) arrangement which you are sharing with some other agencies it might be relating to the marketing, it might be relating to the supply agent, it might be relating to you know the repair and the service; whatever it maybe I mean whatever the agreement which you are doing. Because these are all relevant from the perspective of the competition law or the you know the sectoral regulated because you know they should know what is the market competition where you are operating. So, this is the important formation which you need to disclose periodically to the respective regulator.

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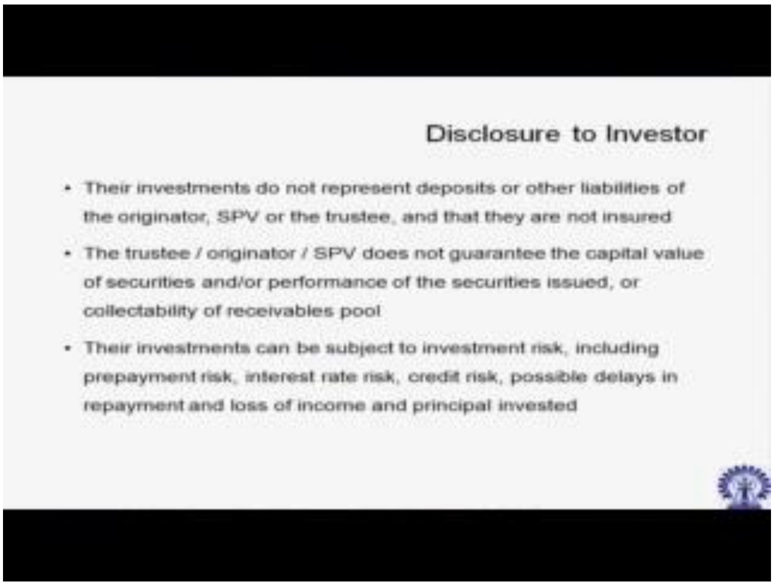


Now, let me take you to next stage of the disclosure to the investors and there in you need to talk about the investment which is not you know ensure or which is not under the liability because you know if you are making an investment and what kind of liability it is getting on that particular investment.

It should be you know made it clear to the investors and whatever the investor investment they are making is there any insurance of that particular investors or that it is a naked (Refer Time: 13:18) or naked market (Refer Time: 13:20) which you need to embrace through this particular investment; that also you need to you know spell it out very clearly. Now, if there is a trust you are originated or SPV do not guarantee the capital value or the security or performance of the securities you know are collectively receivables pool, I mean you know you need to made it clear that you know none of them like you know either SPV or those people who are the partner into that particular SPV or the joint venture partner or the sponsor in that particular joint venture none of them might give any assurance of the performance of your investment. It is not that you know what ever investment you have made you are going to get a return which has been projected to you. So, in those particular circumstances it needs to be very clearly spell it out or you need to give this particular information to your investor.

Next is investment can be a subject to the investment risks including the prepayment risk, interest risk, credit risk and possibility delay in repayment or the loss of the income and the principal invested. So, it might be subjected to the different risks like you know as I have talk about like you know it can be prepayment risk; like you know it might so happen that you know you could not continue with these joint venture for a long period of time or there is a change in the regulation and there in one partner need to dilute this state because government has decided that in that particular sector the following embracement will be diluted and in that the foreign (Refer Time: 15:06) need to take a prepayment and when you are taking a prepayment it might so happen that you might not recovered the entire returns on the investment which you have initially projected.

Or there might be issues relating to the credit risks or interest risk; that means, you know you thought that well in this particular company he is going to do in a nice manner or they are going to the operate in that particular environment in the in positively. But, ultimately you find the joint venture did not work properly. In those particular circumstances who ever has been invested either as a creditor or you know as a depositor they are basically need to accept the low return; if it is not been in guaranteed while they have meant in this particular investment. So, whatever it may it is important that you need to make this particular disclosure as SPV to all your investors or the cluster of the investor you know and you should develop a mechanism of informing these particular disclosure.

Now, the next important issue which is you should keep in mind is a continuous disclosure. Now, the law aims in our country is mandating for continuous disclosure for some of the type of the business form. Like if you are incorporating your venture as a public listed company or a public limited company then in that case you need to go for a continuous disclosure. Even some of the sector regulated prescribed that there should be a continuous disclosure by the venture, you know joint venture companies or maybe you know this organization which has incorporate out of the joint venture.

Now, please remember when we are talking about the disclosure as we have said that disclosure which you need to make to the regulated and as well as invested you might need to maintain the disclosure to the wider people in addition to this to group of people. Like you may require to make their disclosure to larger stake holders and in those particular circumstances, please remember at this disclosure can be categorized into three broad category - one is the financial disclosure, second is a nonfinancial disclosure and third is a risk disclosure and whatever it may and whatever the you know regulation your subject to you need to make this particular disclosure accordingly. In some cases you need to make this particular disclosure in every 6 month.

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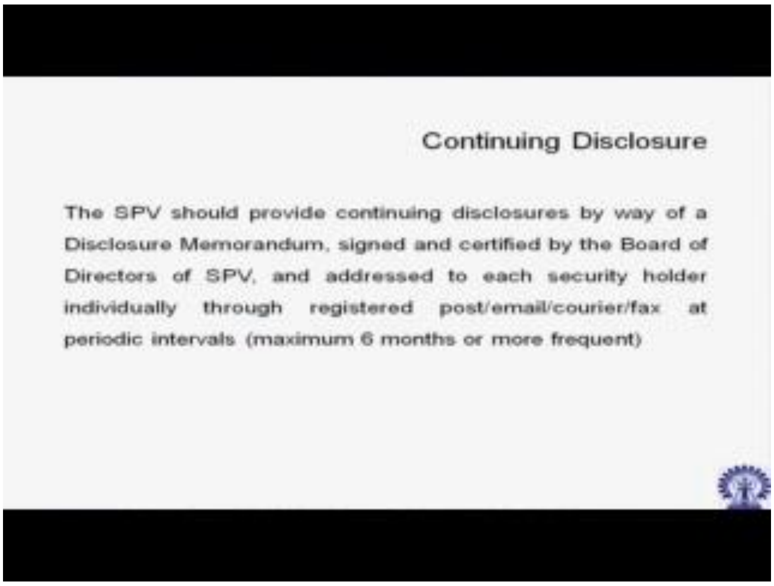


And you know they also sometime prescribed the channel by which you can make this disclosure like you know you have to send it by the register post or email or courier or fax or in the periodic intervals. Or it might suggest you that you need to post this particular disclosure in Europe side and you need to keep that particular website updated every time whenever there is a certain change into that particular organization itself.

Now, next is a Periodical Report. Periodical Report is should published by the SPV and this is basically goes to the sponsorer or the joint venture partner or essay partner or whoever is promoted this particular SPV. Now whenever the SPV is gone for residual restructuring revisiting the terms of an agreement and or the contract and that has a an effect on the transfer of the asset to the SPV and that is need to be disclosed to it is sponsorer. Like you know many of the time you need to go for renegotiating the terms of the credit which we have receive from the public financial institution because whatever your projection was it did not able to meet that particular projection for some of the external reason or external barrier or may be the regulated barrier. So, in that case you need go for renegotiation.

Or maybe you might go for reframing the enter agreement because you know the person who has entering in to agreement who has seeking the service from you or purchasing product from you, they found at the agreement (Refer Time: 19:45) entire upon are not relevant in the chain circumstances, in that circumstances also you need to renegotiate that. And whatever you are renegotiating in the terms and condition in the business you need to report back to your sponsor or the promoter on the joint venture partner who has return that.

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Now, there is another important issue which possibly I am going to talk little detail in my sub sequent lecture is relating to the project risk. Now the project risk in habitual for any kind of you know joint venture or any kind of a SPV which is incorporated out of this particular joint venture. These SPV might fails to manage the project because of the within the time line or the cost successfully because of the several reason it might be internal operational problem or it might be totally external to that particular SPV.

Or it might be cost overall and; that means, particular estimation has been done and now it is more than whatever has been you know estimated and it might be because of the external environment or may be internal process delay. Like externally environment might be you know there is a fluctuation in the currency because whatever these particular transaction was happening you need to depend on the foreign currency or importing of some of the you know manufacturing icon and whatever it has been estimated you find that the because of these fluctuation in the currency, currency has gone up; you know exchange price has gone up and because of that cost of that particular import is gone over. Or maybe there is change in the import duty and because of that you have change into this particular thing or you know because of the internal permission or may be the agreement relating to restarting particular project or resulting the projecting or commissioning the project the joint venture partner could not agreed upon the terms on which it is this particular project will be started and because of that you know the cost over enhance happen.

So, whatever it may you need to again report it back and there might be delay for or delay or there might be other unfortunate element which might impact the viability of the project or profitability of the project and whatever it may you need to you know report it back. Please remember in many of the time even the lenders are come into the picture because lender gives to a lending or they have lend the money or the creator lend the money because they have you know basically go on lended the money based on your project report and the projection which you have made in your project report. And they might come and they might start enforcing the agreement for making the payment in time or they might even take you to the court for you know enforcement of this particulate agreement.

So, in those particular circumstances you need to be a careful and you need to even you try to find out that how you know these thing can be regarded or how the executive court required to defend against this particular allegation or you know negligent or the feature contract, whatever has been allegation has been made to that particular company. Please do remember these are the very serious problem and many of the time your SPV be might fail because of this particular risk, which is basically you know you have not taken care of or you are not thought of while you have either develop your joint venture agreement or when you have find your SPV.

So it is always (Refer Time: 23:53) to you that you should give a adequate attention to this and whatever this issues are you need to keep on you know reporting back to those people who are basically related or relevant to this particular SPV; that means, this sponsorer or may be the lender or may be government agency who might have a interest about this particular joint venture so and so forth. So, that you know if there is a any difficult scenario arises then everybody lend their hand to get out of this particular you know difficult situation instead of creating further problem to this particular SPV.

Now lastly there might be issue relating to the environmental liability and this is becoming more and more on different stage, different industry who creates an impact over the environment. And in our country the environmental regulator is became very stringent now a days and they have basically come out with the different environmental norms and you need to you know compile with that many of the time you will find these particular environment is norm are. So, stringent that you might feel that is a not business friendly. Nevertheless what you made the scenario is you need to manage this particular risk and you need to take adequate protection if necessary. Sometimes even you need to take the (Refer Time: 25:14) protection relating to this particular issue and whatever the decision you take you need to continuously inform this particular issues to the stake holder or largest stake holder of this particular joint venture.

Thank you.