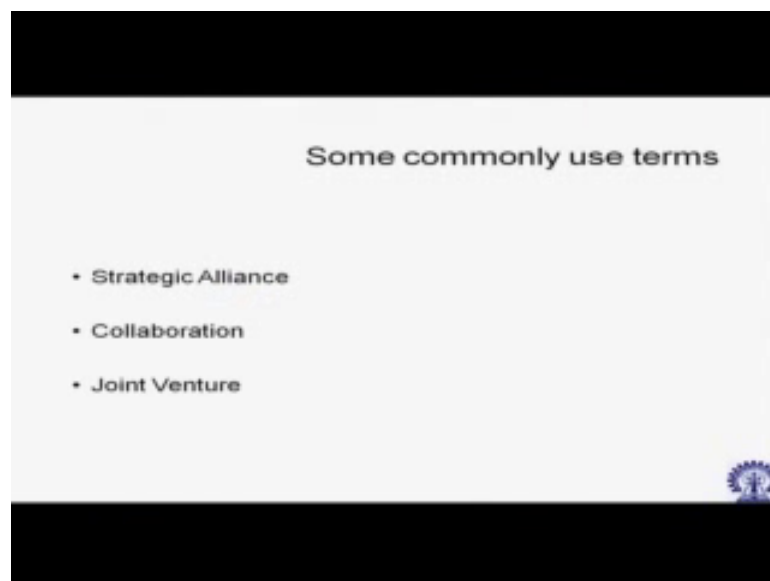


**Technology Transfer through Joint Venture**  
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**Lecture – 06**  
**Joint Venture [JV] Options**

I welcome you in the lecture of Technology Transfer through Strategic Alliance and Joint Venture and this is the sixth lecture of this particular series and I am starting a new module called joint venture. So, in this lecture I will concentrate more on joint venture options and we will discuss the different aspect of the joint venture in the subsequent lecture and I will take you through more in depth understanding of the subject not only the issues in the joint venture but what are the matter you should consider while you are entering into a joint venture agreement.

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So, before I start discussing more about the joint venture, let me take you through some of the common terms which used interchangeably. In my last lectures, I have told intensively about strategic alliance and how you can use the strategic alliance effectively for the purpose of the technology transfer. But nevertheless, let me draw your attention on this particular fact that the strategic alliance is a wider concept, it is umbrella kind of

understanding and within this particular understanding all other concepts can be assimilated like collaboration as well as joint venture.

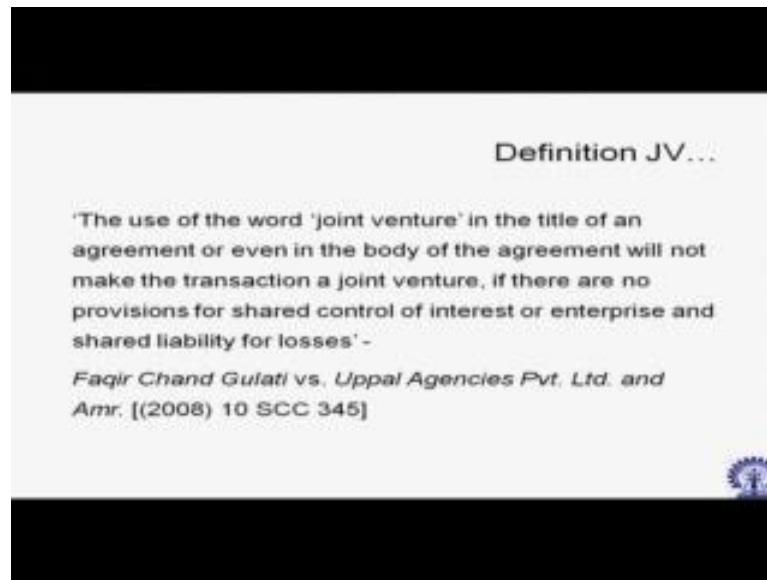
If you remember I have told you that the strategic alliance may be a hard contract or may be the soft contract. When I said that it is a hard contract, I basically indicated the formation of a joint venture out of the strategic alliance and at the same time when I talked about the soft contract, I basically indicated that it might lead to memorandum of understanding or formation of association of person. So, many of the times you will find collaboration used interchangeably and there was no definite meaning in the law relating to the collaboration. It is basically a business term and in the business world people understand by the collaboration, short of understanding between the partners who have a similar objective to carry on the business.

So, in many scenarios you will find people do interchangeably use the collaboration and the joint venture. Now when you are talking about the joint venture, you are basically indicating the scenario which is more of a formal in nature, but it is not necessary that in all joint venture it should be concluded in a formal formation of business organization or business form. It might also continue short of informal manner or maybe semi informal manner. I am going to discuss this particular thing in detail in subsequent lectures as well as this lecture too. Joint venture may be in the nature of formation of the company or joint venture maybe in the nature of formation of the partnership. Now if we say that it is a partnership, it is more of a soft arrangement or it is short of a bit of semi formal type of organization.

But let me draw your attention now that all these particular terms strategic alliance, collaboration, joint venture many of the times used interchangeably. So, you need not to be confused that these particular terms give a specific attributes to a particular negotiation or the transaction or the formation of the organization. Sometimes, you know people say if we talk about the strategic alliance, the compliance requirement is less where as if you talk about the collaboration, the compliance requirement is high and if it is a joint venture, compliance requirement is higher, but there is no such understanding in the law that which one is higher, which one is less higher. It is depending on which sector you wanted to carry on the business and what is the regulatory framework in that

particular sector based on that these higher compliance requirements or lower compliance requirement come into the picture.

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Now, let me take you through the definitions of the joint venture. Now, if you look into any law in India, they do not define the word joint venture and because of that there are several issues which have come up before the court. So, one of the case which I have picked up which has decided by supreme court of India in 2008 and name of the case is Faqir Chand Gulati versus Uppal Agencies private limited and while defining the word joint venture, supreme court said that there should be some kind of control of the interest and sharing of the liability for the losses. So, until and unless these two tests satisfied, then in that case we cannot say that, that particular relationship is a joint venture.

So, here somehow Supreme Court tried to formalize the understanding of the joint venture which is bit different than that of the strategic alliance as well as the collaboration too. As I have told in case of strategic alliance it can be a very informal. So, there might not have any issues relating to the control in the organization which is come up out of the strategic alliance or there might be you know provision where in the partner who is transferring the technology to the venture, they might not be interested to take any kind of liability for that particular new venture. So, may be in case of the

strategic alliance, there is a new concept of sharing of the control or sharing of the losses, but in case of the joint venture as the Supreme Court pronounced, there should be some kind of control and some kind of liability in this particular venture.

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So, now let me take you to the next concept what legal entity which basically develop out of the joint venture and I have listed the three here. The first one is association of the person, and then the partnership which is unincorporated or incorporated and then I said the companies and I have listed couple of them, it is a private limited company, public limited company which is listed and unlisted. Now, let me illustrate this organization little more or bit more. When I talk about association of the person, I basically indicate that form of the organization which might be formal in nature and established by the law or may be simply understanding of a broader agreement between the two partners who are party to this joint venture.

So, let me explain to this, association of the person maybe a society. You might form a particular society to look after the business as product of a joint venture or even you might go for formation of the cooperative as a product of the joint venture or you can simply go ahead like association of the person. Here in the person means it is not a natural person, but it also includes the artificial persons like company, societies,

cooperatives, LLPs. So, here in we are talking about not only the natural person but we are also taking about the artificial person that means in law, some of the organizations which are getting incorporation certificate, they are also known as a person in the IF law.

So, we are talking about this particular thing. When we are talking about the association of the person, it can be of formal in nature or it may be quite informal in nature. Now let me explain to you what is the society, it is a generally registered under the Societies Act in India and those people who wanted to promote a common objective they can come together and contribute in the capital of the society and they can promote that particular cause. Now, generally in India, the society is incorporated as non-profit making institutions and please remember some of the times for the promotion of a technology or promotion of know how or understanding of any particular domain, you might go ahead with the society because you really do not find a potential gain out of that particular technological exploitation or technological exploitation of know how or further R and D, but what we are looking at the end of the day is that whatever you are trying to assimilate by this particular process, the technology which you are trying to assimilate by this process, that might lead to some kind of business venture tomorrow.

So, you might choose a form of society. Similarly, you might go for co-operatives, it is registered under the Co-operatives Act in different state. Now, cooperatives are not a central act, these are the act which is enacted by the different state legislations and that is the reason you will find there is a kind of variation within this particular act itself in relating to the incorporation procedure, relating to the capital requirement, relating to the management issues and relating to the winding up of these particular cooperatives. But nevertheless they are based on some kind of a common principle. So, you might even choose the co-operatives because co-operatives give you a lot of flexibility in terms of the compliance as well as getting the capital into this particular venture. Now, cooperatives may be used for the purpose of doing the business in a large scale.

So, if you are wanted to have a pilot understanding of a particular market or if you just wanted to put up a pilot project because you are not sure that how market reacts against the product which you wanted to bring or the technology which you have used for

bringing that particular product, then in that case it is advisable that you might go for formation of the cooperative in a particular venture.

Similarly, if you think that you need to have more flexibility and you really do not want to go for any kind of formation because if you are going for a business organization formation at the end of the day, if it not succeed then you are required to go through the formal winding up process which you might not like because you were not sure about what should be the fate of the venture because many limitations are there, also there might be many barriers which is there in the initial when you are entering into the market. So, you might look for more flexibility. You can simply go through this management which is basically called as association of the person, association person is not governed by any formal law, but it is governed by the contractual principles. So, you can have formation of the association person to carry forward your venture.

Now, next category is a partnership, according to me partnership is a more formal arrangement than that of association of a person and the partnership can be two type, one is a un-incorporated and incorporated. Now, if you are talking about the partnership unincorporated, then these governed by the partnership act which is quite old and the requirement of registering the partnership is quite flexible in this particular case because the partners in the venture should enter into an agreement which is known as a partnership agreement and they can register that particular partnership agreement with the register of the partners.

So, once they get this partnership agreement registered, the partnership can carry out the business in the domain wherever they wanted to do, at the same time they can also acquire the common property, common property in the sense, the partners as well as the partnership firm will hold the property commonly or jointly. At the same time they have the right to prosecute somebody if somebody do not honor the contractual obligations or they can be prosecuted by somewhat. So, what I am trying to talking about is a more formal management than that of an association of a person.

At the same time, in case of the partnership the law is well developed and there is a lot of judicial pronouncement on defining the different aspect of the partnership relating to the

capital to which the partners can bring, what are the right partner has on the property which they are commonly developing, what are the right of the partner if they wanted to exit, how the partnership can be dissolved if the partnership can be perpetual in nature or partnership is for a specific venture. So, all this particular things has been detailed out by the act as well as by the judicial pronouncement.

So, sometimes you will find that if you want to have a flexible structure and you wanted to give kind of a more access to your partner in the local area and you really do not want much control into this particular joint venture, then you will go for a partnership arrangement. There is a new concept which has been introduced in India which is known as a limited liability partnership, it is somewhere bit different from the partnership because in case of the limited liability partnership, it basically leads to the incorporation of a partnership.

Now, when we are talking about the incorporation of the partnership which is in the IF law, it has become a more formal organization, that means these particular organizations can perpetually exist even if all the partners are dead from an accident. So, it is sort of like a company, but you know one thing you should remember this LLP somewhere stands between the companies and the partnership because in case of the LLP, the liability of the partners are limited, but at the same time you have a flexibility relating to getting the number of partner defining your capital of that particular company and the way you wanted to carry out this particular process.

So, if you think that you are coming out of the joint venture which is more related to the service or may be technology related service, then in that case it is suggested that you should develop the venture as a LLP and you can keep on continuing with this particular LLP until you find that you have sufficiently developed the market base where you wanted to carry forward the future businesses. So, partnership LLP gives you a lot of flexibility for the venture to get incorporated and to continue in a future endeavor.

The last one is relating to the companies, within the companies we talk about the private limited company and public limited company. In case of the private limited company, it is again a formal arrangement where the promoters have to promote this private limited

company, here the promoters are the joint venture partner. So, the joint venture if it wants to take a shape of formal organization which is in the form of a company. Now when I am talking about the private limited company, I do indicate that you are basically limiting the partners who can join into this particular partnership because you are not allowed to make a public offer and to raise the money through the public subscription, whereas in case of the public limited company you have that particular flexibility to raise the capital through the public offering and you can do it, you can offer for the equity instrument, debt instrument and even for the convertible instrument.

So, if you want your organization to be a small organization initially and you wanted to really test this progress of the venture, you need not have a lot of compliance, wanted to have a lot of compliance which is required for that particular market and you just wanted to put the project in the pilot mode and you have a very strategic development you know goal, then in that case it is advisable that you should go for a private limited company than that for a public limited company, but if you wanted to aggressively acquire the market where you wanted to do a lot of capital infusion, you are also looking for other people to infuse the capital into this particular venture, at the same time you wanted to access the public excess of market or access the public money, then in those particular circumstances it is advisable to go for a public limited company. But the limitation in case of the public limited company is that there is lot of compliance you have to go through and that particular compliance might be bit cumbersome, time taking and also cost intensive.

So, in these particular circumstances you need to decide that which should be your joint venture vehicle or joint venture organizations which are suitable for you to pick up and to go ahead with executions of the venture which you have entered upon. So, I will suggest you that before you really take a decision about formation of a particular organization as a outcome of the joint venture, you should do the ground work, you should do the related assessment of the regulatory compliance, you should do the due diligence in terms of a finance, in terms of strategy, in terms of the resources and in terms of the human capital which is available into that particular market and then you take a decision that what organization you should form for your joint venture.



Thank you.