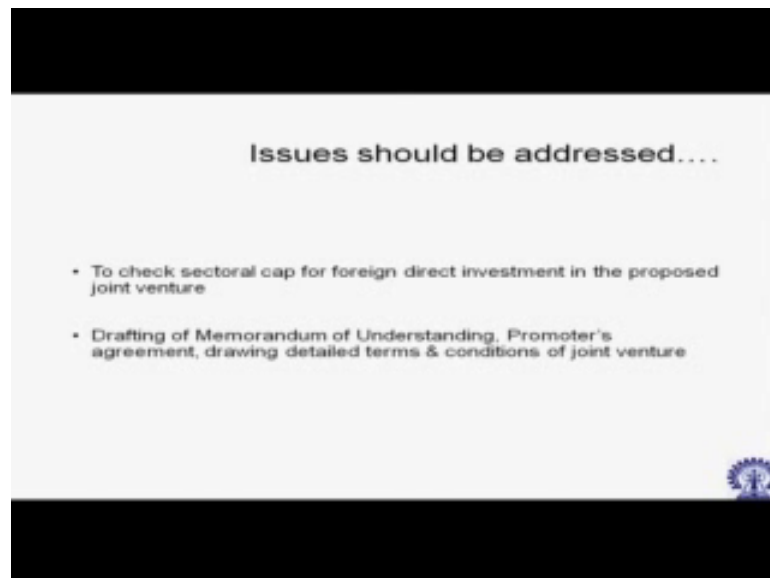


**Technology Transfer through Joint Venture**  
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**Lecture – 09**  
**Key Compliance**

Welcome you in the ninth lecture regarding Technology Transfer through Strategic Alliance and Joint Venture and I am still in the module on joint venture and now I will specifically talk on key compliance.

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Now, in the key compliance my talks concentrate on what are things you should address before you go for formal agreement of joint venture. Now, in these particular talks, I do not differentiate about the foreign joint venture or the joint venture with the foreign partner and the domestic joint venture, I take both the thing together and so you might find somewhere it is confusing. So, I am going to explain in which point is for foreign joint venture and which point is applicable for both domestic as well as foreign joint venture.

My first point is to check the sectoral cap for the foreign direct investment in the proposed joint venture. Now I have referred these particular talks in my last lecture too, let me in detail now this particular issue here in this talk. If you are looking for a foreign partner to make an investment with you in a joint venture, then in that case you need to go through the sectoral guideline and which are the places you should see this particular sectoral guideline. The first thing which you need to look in is RBI guideline relating to the sectoral cap, in some cases there is a automatic approval, that means RBI prescribes that a particular amount of investment can be done without taking a formal approval and in some cases you need to take a approval before you make an investment.

So, if it is automatic, then you will find it will go through FIPB - Foreign Investment Promotion Board. You have to look into what is their prescriptions relating to a particular sector and please do remember this particular segment is not fixed, it is revised periodically and it is also prescribed additional compliances relating to the investment criteria which I am going to talk you a little detail after sometime.

Then you need to look into any regulation which is prescribed by a capital market regulator relating to foreign direct investment because if you are promoting or incorporating a public limited company as the product of joint venture agreement, then in that circumstances you need to take a necessary permission from the capital market regulated that is security exchange board of India, in short it is known as SEBI and in those circumstances also you need to look into the other requirements like the listing requirement and you might require to fulfill those particular listing criteria if you want to list your company in post incorporation.

Apart from these, there are other sectoral regulators. So, whatever the regulator I talked with you right now they are basically the central regulated or one of the regulated like RBI which is a regulator of a money market. RBI also regulator of foreign investment and they are basically a regulator in the national market but apart from that there might be a sectoral regulator, that means a particular market might have a particular regulator who controls that particular market. Let us take example that it can be relating to financial instrument like if it is a mutual fund then there might be some regulator who regulates this particular thing. If it is relating to other production facility like power

sector, then again you will find that specific regulators are there, if it is relating to some of the other sector, it might be relating to telecommunications and all these, then again you will find a sectoral.

So, in some of the sector you might find there is a sectoral regulator and these sectoral regulator has prescribed the additional criteria in case of investment and these are basically commonly known as sectoral cap and sectoral caps is generally prescribed by the RBI as well as the sectoral regulator together. Many of the times or even sometimes you will find the RBI to prescribe because RBI also administers foreign exchange management act which is dealing with the foreign exchange inflow and outflow and that is the reason they do also prescribe the regulation relating to the sectoral cap.

So, the sectoral cap is very important in case of a foreign joint venture, foreign partner making an investment into a joint venture. These particular provisions are only applicable if there is a cross boundary joint venture. Now, let me come into the next point relating to the drafting of memorandum of understanding, promoters agreement drawing detailed terms and conditions of the joint venture.

Drafting of memorandum of understanding for a joint venture is sort of umbrella agreement, you might detail out the every aspect of the joint venture in that or you might not detail out every aspect of the joint venture. So, what you can do, you can create a umbrella agreement and within the agreement you can have several small agreements and I will suggest you to do that because sometimes you need to change the agreement and if you change the agreement, a particular agreement or agreement on the particular aspect then you actually do not disturb the entire agreement, but you only redraft or reaccept that particular agreement itself.

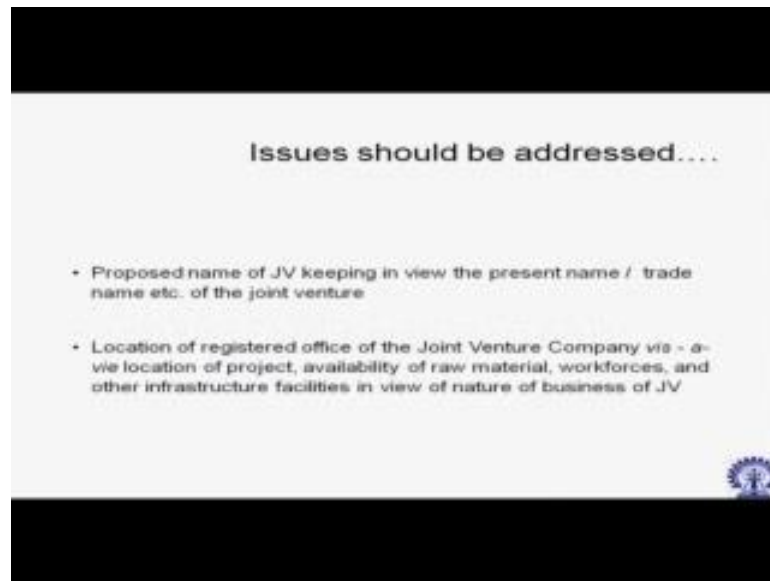
So, in case of memorandum of understanding, you generally talk about the capital infusion or the finance which the parties will contribute in the venture. You might talk about the technology which you are going to share or which you are going to develop in the future or which you are going to use for development of the product in the market. You might talk about the control in a new venture within that particular technology. You

might talk about the expansion of the business in other market or export right into that particular venture.

So, I am going to detail out that what should be the contain of a joint venture agreement in my subsequent lectures, but for your understanding you should keep kind of a umbrella agreement for a joint venture and within the umbrella agreement you should have a promoters agreement. This agreement generally talks about that how the parties in this particular organization will behave in future or in a post incorporation scenario regarding the change of ownership, regarding the infusion of a new capital, regarding the exit of the partner from that particular venture. So, the promoter's agreement is very important for the future reference as well as how the company or the business organization which has been formed out of the joint venture agreement, how they are going to go ahead or how they are going to be managed in the future.

Similarly, you might also draw the detailed terms and conditions relating to other issues, may be relating to the technology transferred, relating to the absorption of the technology, relating to the knowhow of the technology which you have passed through. If there is a new technology which is developed out of these joint venture, who will have a right over that particular technology, if you wanted to export a particular product which is coming out of that particular newly developed technology, who is going to have that particular export right. So, you detail out many issues which might going to affect your joint venture in future.

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Then you talk about the name, proposed name or the trade name of the joint venture. Now, this is quite significant issue in case of the joint venture, are you going to give the partners name in the joint venture or are you going to give a new name into the joint venture. Many of the times, people do want the partner name to continue in the new joint venture organization or new company which is coming out of the joint venture because it gives the credibility into the market where they wanted to establish themselves.

Take a example, if you find that a company insurance company coming in Indian market, they always try to take some of the established known operator into the market and then they co-branded that particular company in the Indian market, like you will find Birla Sun, Birla is a known operator in Indian market and people have a quite faith on these managements or these group of people.

At the same time, Sun is one of the known insurance providers in overseas market. So, whenever they are forming their company they are keeping these two name in their joint venture so that people can gain the trust or you can get the trust easily from the people because both of them are financially rich, at the same time they have a track record of doing good business into the finance in the insurance product in the past years. So, in the financial market you will find this is quite common because in case of the financial

market all the business or majority of the business run based on the reputation because if the player does not have a much reputation, then they do not really secure the trust of the people relating to that product.

At the same time, when you are looking for a particular name you need to see that, that particular name does not exist, in that name there is a no existing business organization or the company and it is also not a trademark or you know brand name of any particular product or the company which operating in that particular market. So, what people say that it should not be similar when you are incorporating this particular company, now you will find that ministry of corporate affair has given a detail guideline relating to how to choose the name of a company if it is incorporating as a company and at the same time which are the names which should be prohibited in taking as a name of a new venture. So, I will advise you that you should login to the MCA site and now it is automated you can put the choice of your name and try to check that these particular name is available in these particular market or Indian market or not. So, name is one of the important issues in case of the joint venture.

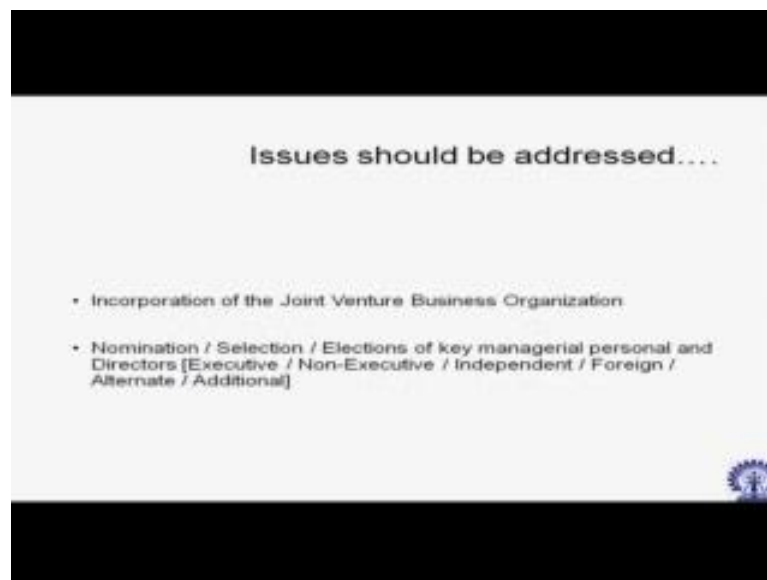
Now, the next thing you need to decide on location of the registered office of the joint venture and location of the project. While you are deciding on the location of the registered office, you need to look into the different issues like is your registered office is somewhere located which is in proximity of the business environment, that means it is always advisable that wherever there are financial institutions or wherever there are other companies are there who provide the different kinds of services like trade creating or you know the merchant banker if you wanted to go into the market tomorrow or there is a asset management company, you should have your company registered in those particular place because it is the matter of the convenience to take the different service which you wanted to take.

At the same time, you are also required to locate your factory which might be quite near to the availability of the law material or the technical work force which you are looking for or there might be a specific infrastructure facility which is required for your business. So, finding the location of the registered office as well as the project location is one of the important decisions in case of the joint venture. Like many of the time you will find

if you are dependent on the minerals, you will try to locate your factory near to the mines so that you know the transportation cost will be less, at the same time you will have a continuous supply of the mineral on which you wanted to develop the product.

Similarly, you might be highly dependent on the transportation and it will be good if you can access the railway transportation facility. So, you might like to get approximate with railway infrastructure or you might sometime look into the highway infrastructure which might help you to transport your goods or the raw material into your factory or the finished goods to the outside market. These are the some of the strategic decision which you need to look into this. Many of the times, even you know the labors or the accessibility of technical labor is one of the issue and like you know if you are a software company or if you are more you know service oriented company, possibly you might prefer Bangalore as a location because you will find that it has created a service ecosystem or the business which provide a ecosystem for service companies.

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Now, let me come into the next point relating to incorporation of joint venture business organization, I think in my last lecture I have detailed out that what type of organization you should choose for the joint venture and it is also not necessary that you need to have a formal business organization, but if you choose the business organization then you

should find out that which business organization is suitable for you, which that particular business organization is matching with the objective of the business which you wanted to pursue, will it be giving you the scale of operation which you are looking for, will it be helping you in the growth in the future, will it help you in raising the capital from the market, will it give you kind of credibility before the market, will it give the attraction to your future workforce.

So, when you are choosing the organization there is a several criteria which should come into the picture. At the same time, do not forget about the regulatory requirement because in some of the regulatory requirement they prescribe a specific form of the business and you need to incorporate your business if you want to operate in that particular segment, at the same time they do prescribe a capital requirement. So, if you have a huge capital requirement, you cannot incorporate your business as a partnership, you need to incorporate your business as a company because in that case only you can address the huge capital requirement or capital need. So, again incorporating or choice of particular business organization, how to incorporate that, this is the matter which you need to address into your joint venture or before you go for negotiation in a joint venture.

Now, the last one is quite important it is relating to finding the right kind of people who are going to work in your organization. You need to find out that who will be the key manager personnel in this joint venture organization, is it that these people will come from a parent organization and if they are coming from a parent organization there are coming in which terms and conditions.

So, are you going to select the people from the parent organization or you are going to select a new set of people for this new organization or you are going to adopt or you are going to invite some of the people who are operating in some other market to come and join into this particular market because there can be some kind of a regulatory prescription and there can be some kind of a market requirement like let me try to give some illustrations like if somebody wanted to be a director of any company at present, then in that case they are required to acquire a director information number from the Indian regulators. So, somebody might be a director in some company, in your partner



company in foreign country, but if they wanted to come to India and operate as a director, then they require to take a director identification number

Now, Indian law do prescribe relating to how to appoint the directors, what should be their qualification to be a directors, one kind of director he is because if your joint venture is ultimately incorporating company and if it is a public company and public listed company then in that case you need to comply with the regulatory minded and regulatory prescribe what should be the composition of the board of directors and in that particular board of director, how many people will be the executive director how many people will be non executive director and how many people will be independent directors and you need to comply with these particular requirement.

Now, these particular types of the directors are different from each other like if the person is a executive director then he generally having a contractual relationship with the company that means, he is an employee of the company, but when you talking about the non executive director, they are basically appointed by the shareholders, again the independent director there is a procedure has been laid down and where in the qualification of independent director has been prescribed.

In the board there might be a director from the creditors who are giving a credit to your business joint venture and that particular person is generally known as nominee director. Similarly, in the board there can be a person who is a foreign director or who may be the alternate director. Foreign director is the person who generally comes from your foreign partner into this joint venture board and the alternated director means the one who act on behalf of a foreign director in his absence he is known as alternative director and there might be some directors who are the additional directors, who are been appointed by the board for addressing the particular expertization requirement, expert requirement or expertization which board is looking for.

So, what I am trying to drawing your attention that you need to decide about the management or who are the people who is going to manage these joint venture company in post incorporation scenario and these are the issues which you need to do a homework

before you even go for a negotiation table. So, my advice is you know this homework should be done before you go for a negotiation in a joint venture.

Thank you.