

Joint Ventures Agreements: *Definition, disputes and resolution.*

25 September 2016

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2016

Introduction to Joint Ventures
in India

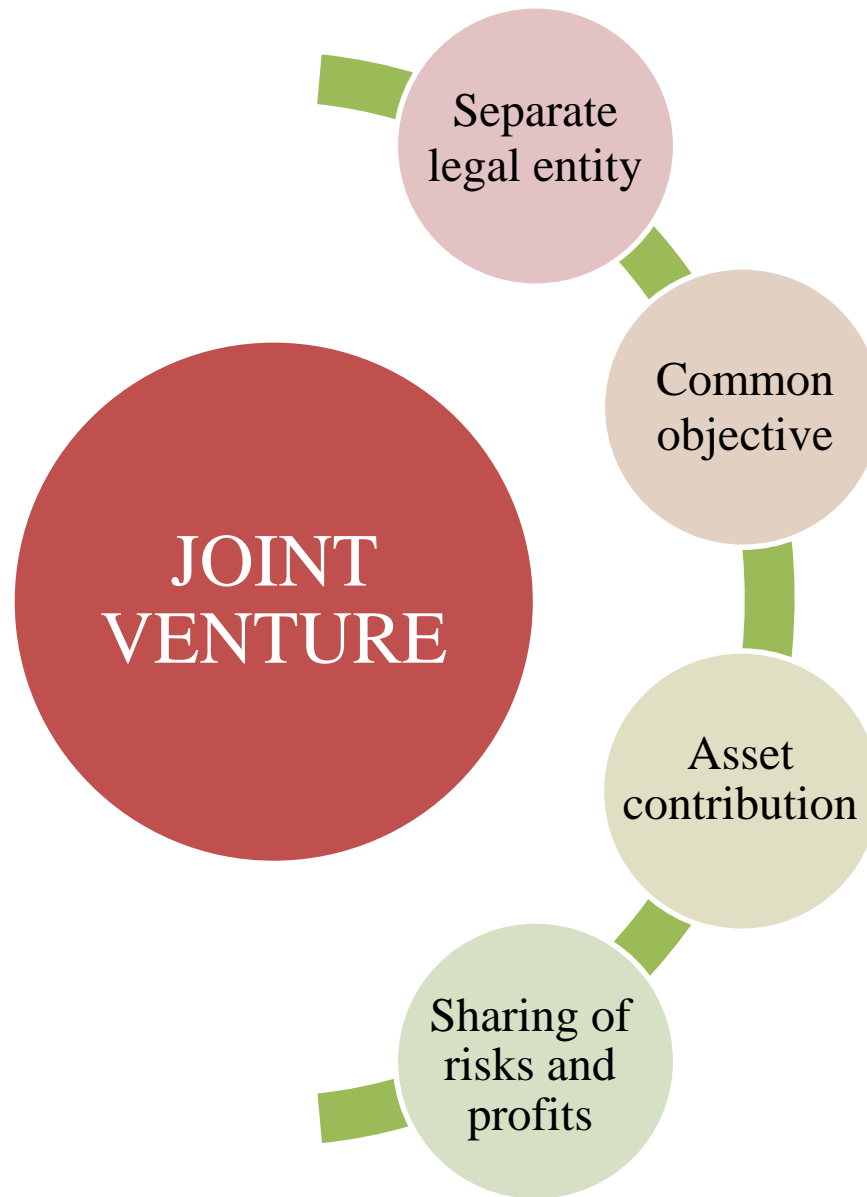
Funding a Joint Venture

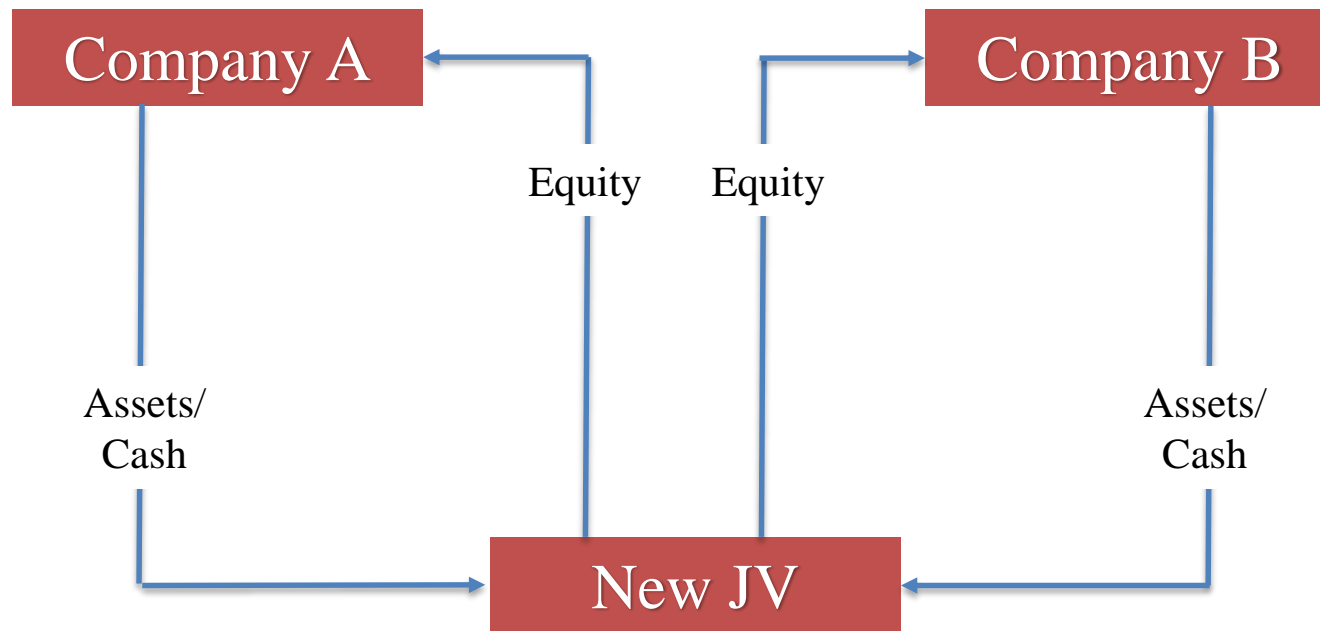
Key Commercial Terms in JV
Agreements

CCI Implications

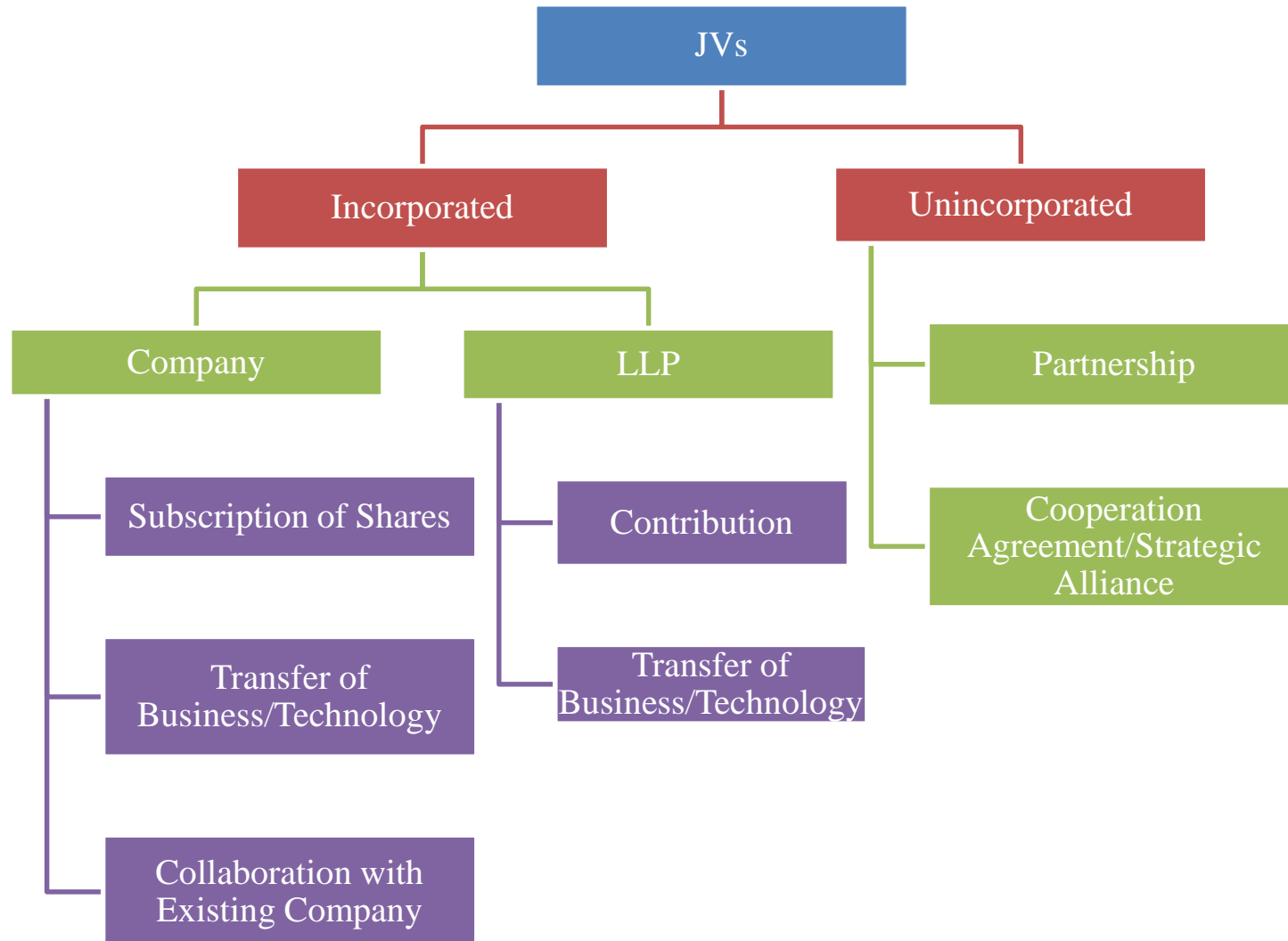
Introduction to Joint Ventures in India







Typical JV Structure

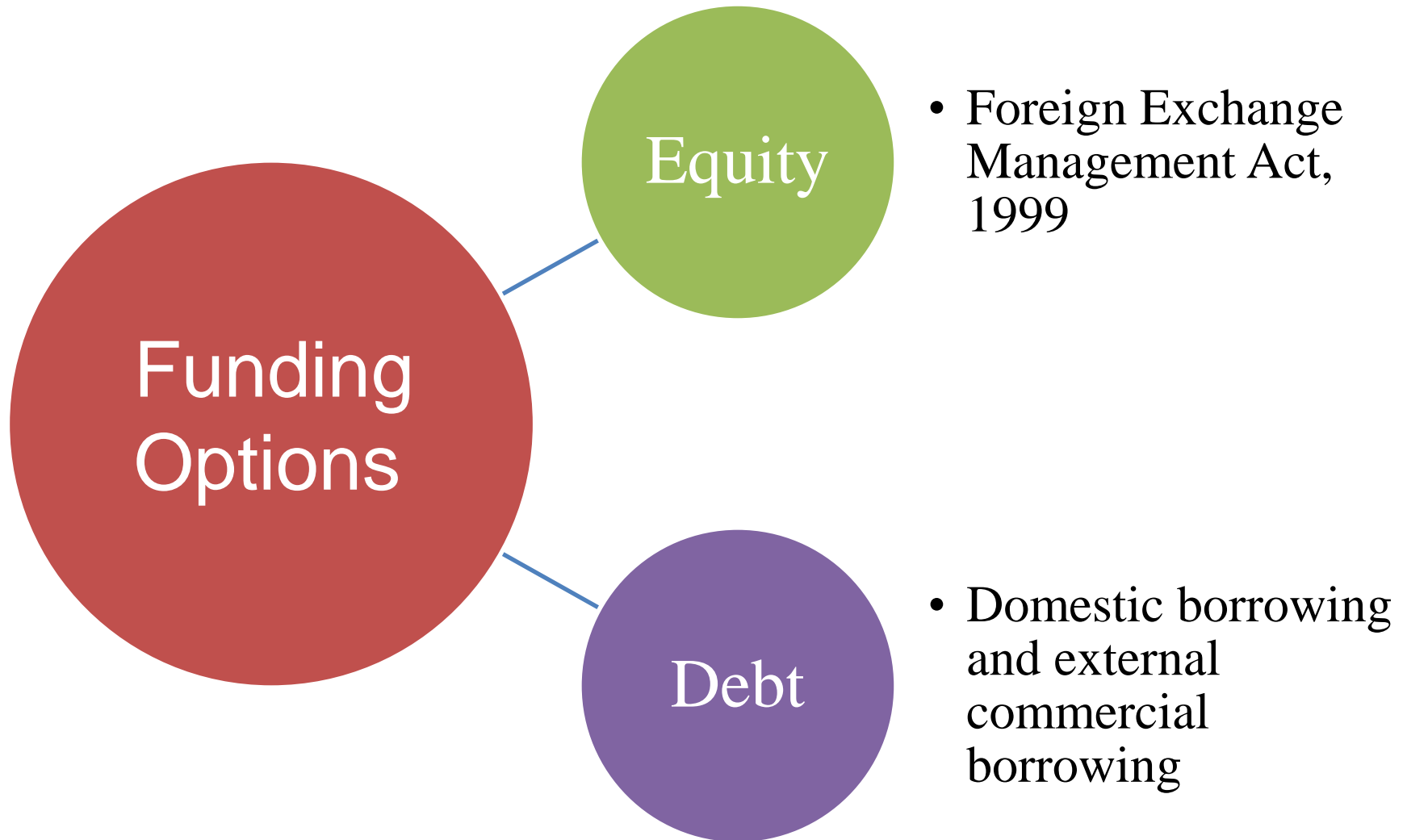


- Object and scope of JV
- Participation of JV Partners
- Future issuance of capital
- Financial arrangements
- Composition of board
- Management of JV company
- Distribution of profits
- Transferability of shares

- Deadlock resolution
- Restrictive covenants on JV Partners and the JV company
- Reserve matters
- Appointment of higher management
- Non compete clause
- Confidentiality clause
- Indemnity clause

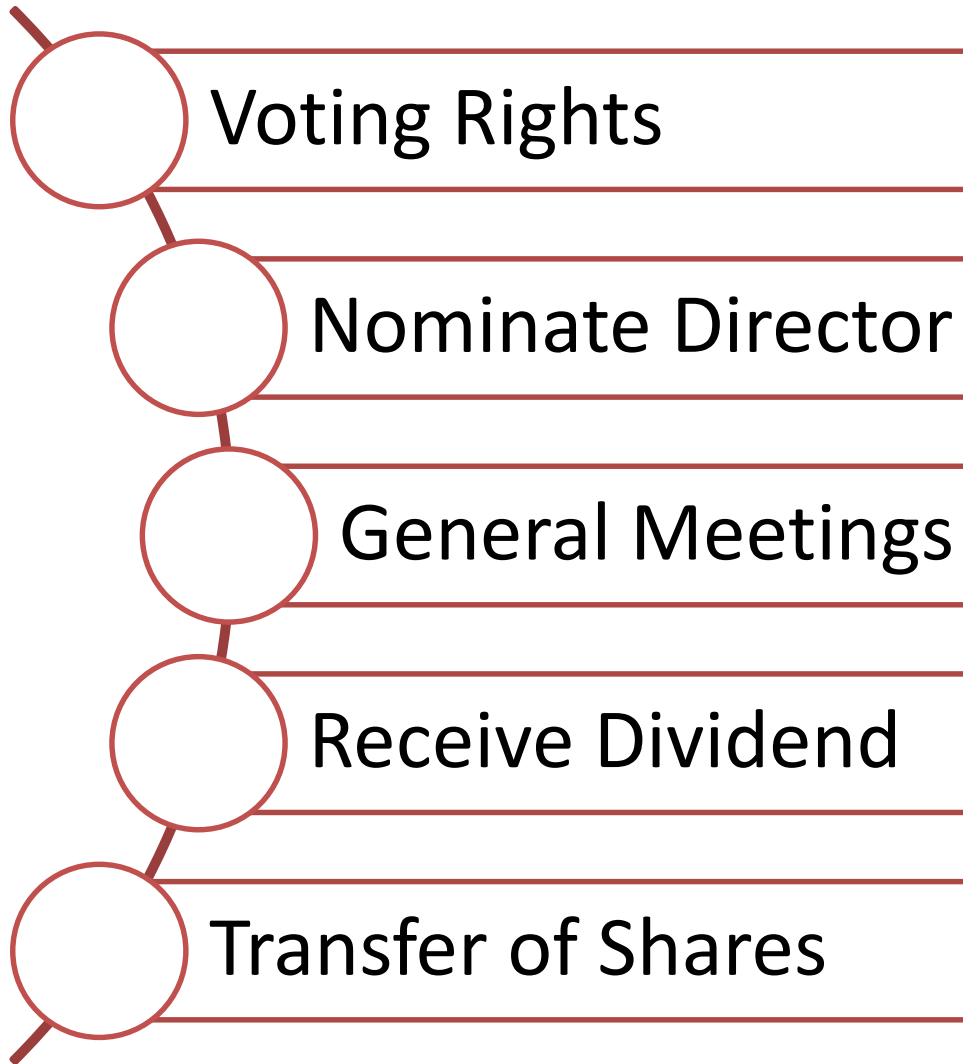
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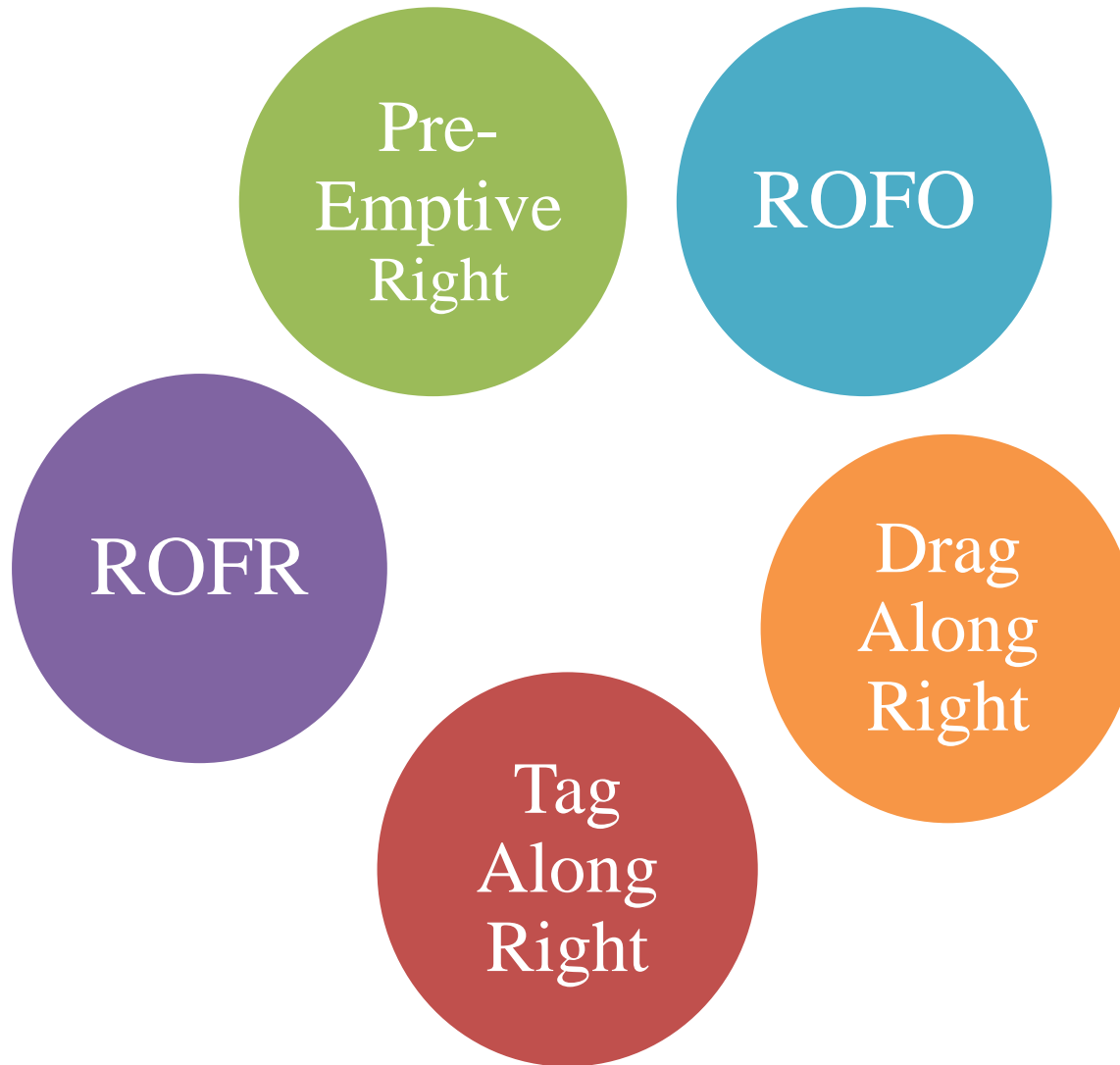




Key Commercial Terms in JV Agreements







Types of Votes

- *Affirmative: requiring the affirmative vote of the right-holder*
- *Negative: granting a veto to the right-holder*

Matters that may be listed

- *If outside the scope of the normal day to day working of the company.*
- *If impact shareholders' current or future shareholding in the company.*

Common Examples

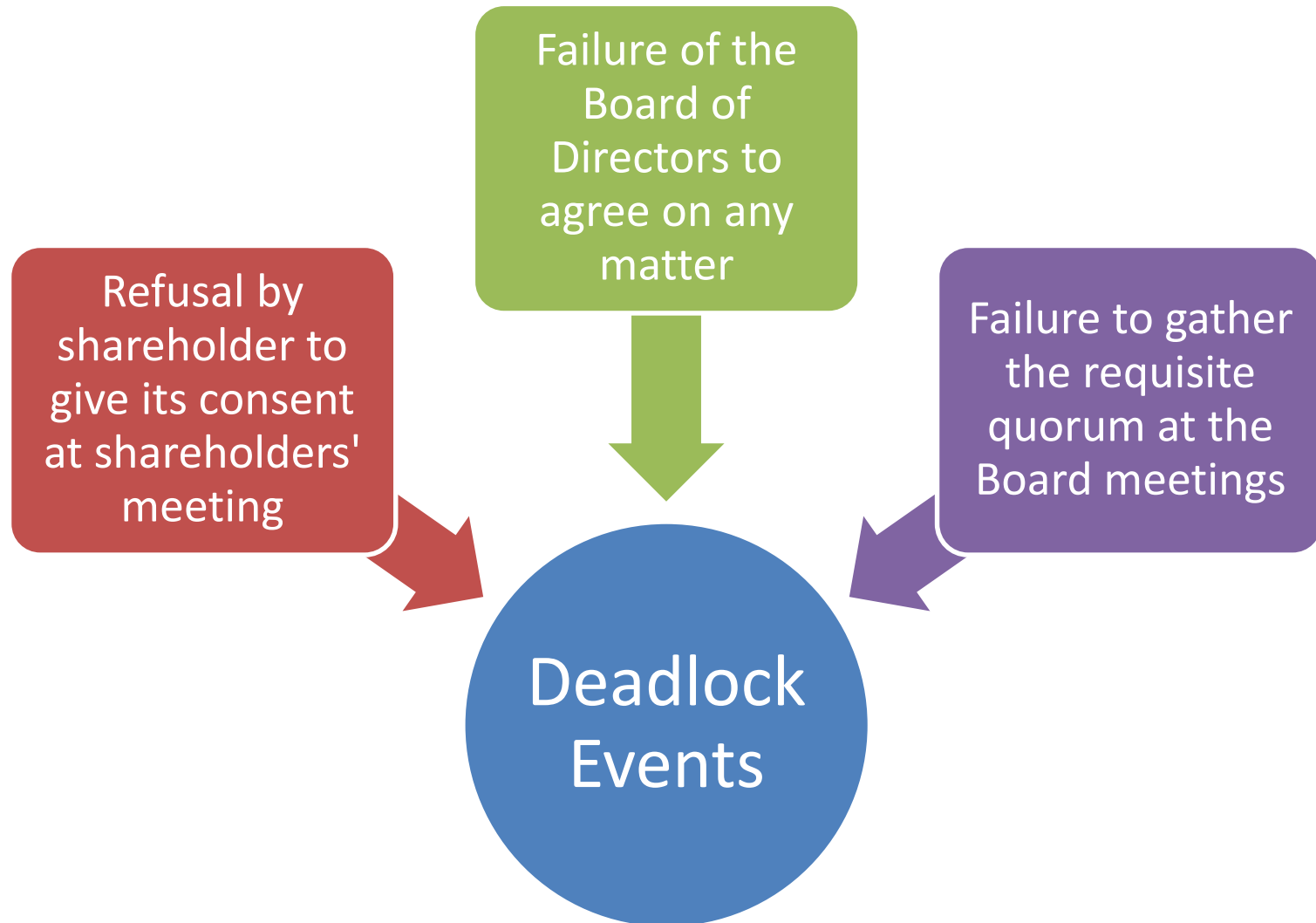
- *Appointment/removal of senior management or statutory auditors of the company.*
- *Changes in capital structure, mergers and acquisitions, creation of subsidiaries.*
- *Large capital expenses, acquisitions of outside entities, entering into indebtedness.*

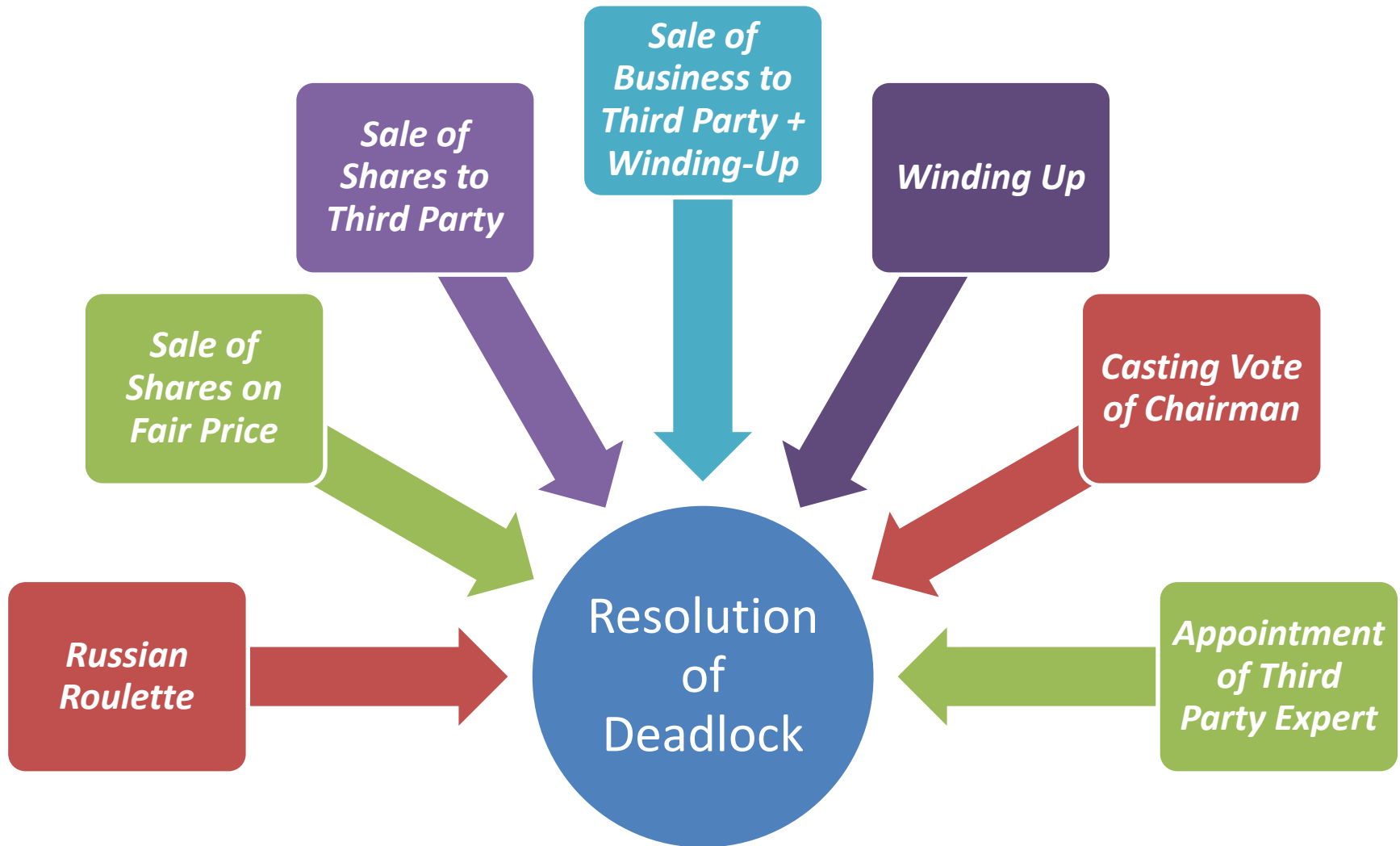
Non-Compete Clause

Restriction on entering into a similar trade or business.

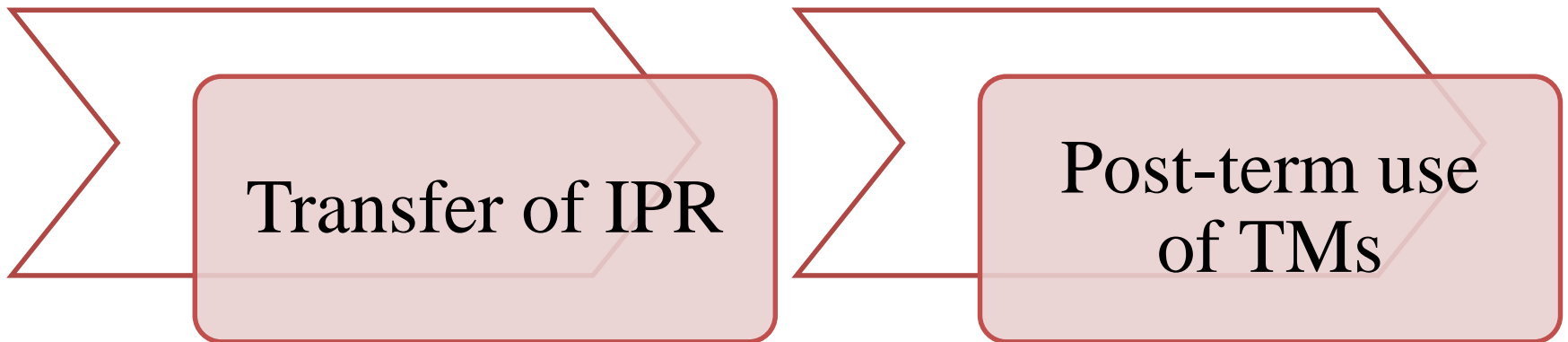
Non-Solicit Clause

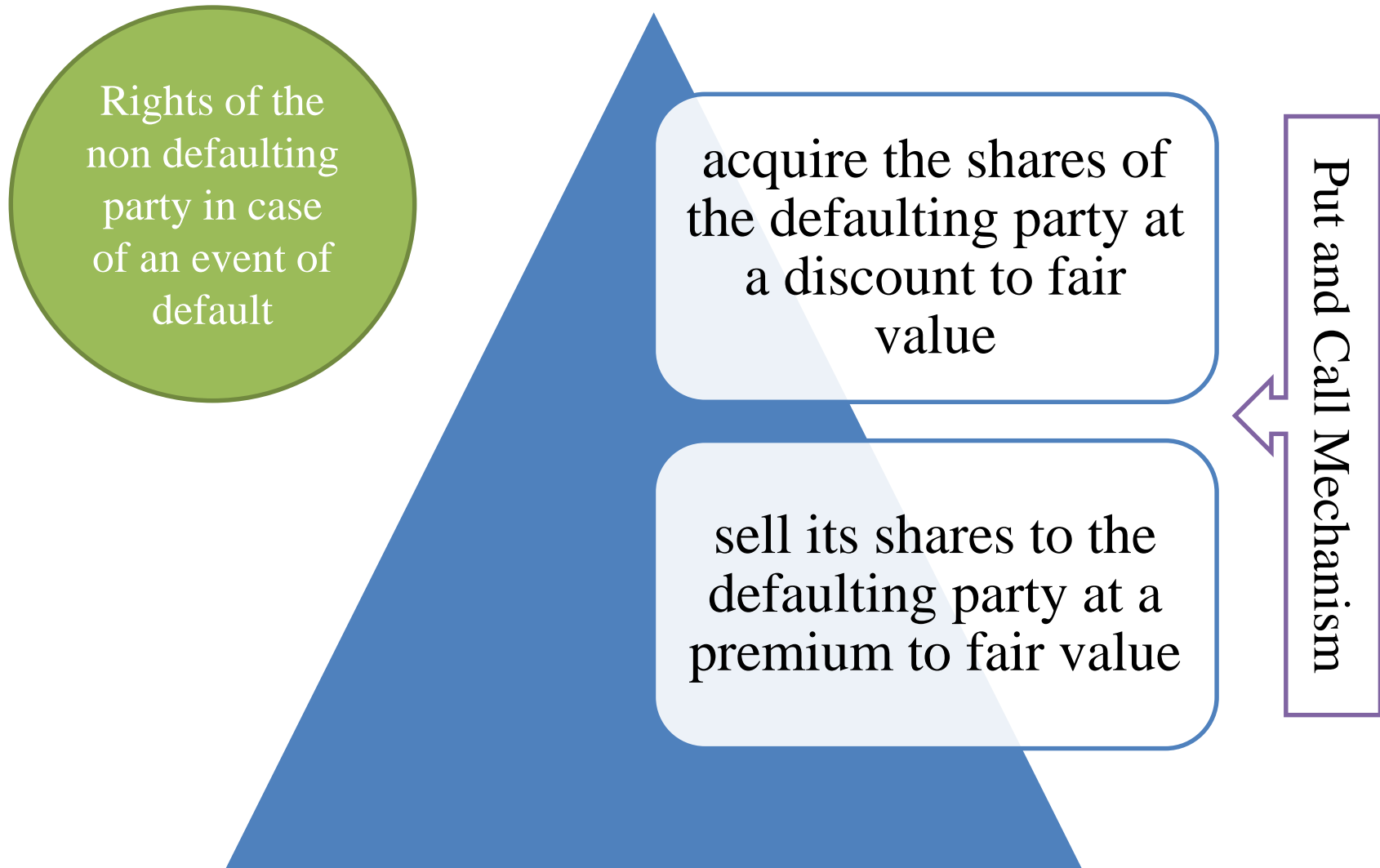
Restriction on soliciting company's employees or customers may be enforced on a case to case basis.





When the JV Partners form a JV, they may conduct business under a new brand name or the JV Partners may decide to assign or license the right to use the intellectual property of the JV Partners.





- Any commercial matter, if it arises out of or relates to a contract, can be referred to arbitration.
- Standard clause:

*“In the event of any dispute, controversy or difference between the Parties arising out of or relating to this Agreement (including a dispute relating to the validity or existence of this Agreement and any non-contractual obligations arising out of or in connection with this Agreement) (a **Dispute**), any party to the Dispute shall be entitled to refer the Dispute to arbitration (**Notice of Arbitration**) to be resolved in the manner set out in this Clause. This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding.”*

- *Disputes between JV Partners often relate to transfer of shares, non-compete, intellectual property etc.*
- *Whether or not oppression and mismanagement is arbitrable*
 - Unsettled law
 - Arguments against reference to arbitration
 - Sukanya: If there is bifurcation of reliefs, there can be a situation where 2 fora could decide on similar issues
 - Bennett Coleman: Companies Act requires the CLB to decide the dispute
 - Mere arbitration clause cannot oust jurisdiction of the CLB
 - Arguments for reference to arbitration
 - High courts have also held that S.397-398 do not cast an exclusive jurisdiction on the CLB
 - If civil courts can hear petition under S. 397-402, an arbitral tribunal should also be able to hear the same dispute.

- Foreign governing law.
- Jurisdictional nexus between the JV Parties and the governing law.

CCI Implications



		Assets	Turnover
India	Acquirer and target (collectively)	INR 20 billion	INR 60 billion
	Acquirer's group together with the target	INR 80 billion	INR 240 billion
Worldwide	Acquirer and target (collectively)	USD 1 billion worldwide including assets of at least INR 10 billion in India	USD 3 billion worldwide including turnover of at least INR 30 billion from/within India
	Acquirer's group together with the target	USD 4 billion worldwide including assets of at least INR 10 billion in India	USD 12 billion worldwide including turnover of at least INR 30 billion from/within India

Note: Please note that 'group' will include all entities controlled by the ultimate parent entity (UPE) where the UPE directly or indirectly (i) exercises 50% or more of the voting rights; or (ii) appoints more than 50% of the members of the board of directors; or (iii) controls the management or affairs.

Case Study



- JV between Party A (non resident) and Party B.
- Exit clause: If certain targets are not met in a specified period:
 - *Party A will sell its shares to a third party buyer, or*
 - *Party A will exercise Put Option at a pre-determined price (higher than FMV).*
- Put Option Enforceable at FMV.

THANK YOU

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