

Why Joint Ventures Fail: Judicial Disentanglement

Workshop for High Court Justices on Commercial Division and
Commercial Appellate Division [P-1245]

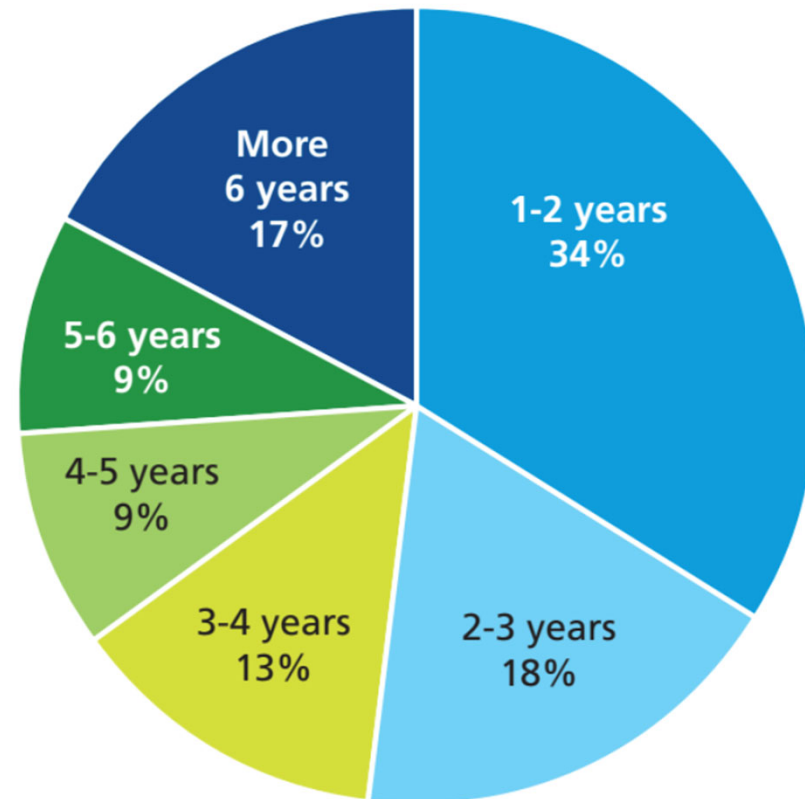
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JV Relationship

Transient
rather than
eternal

3-year average track record



Source: Deloitte, *A Study of Joint Ventures: The challenging world of alliance* (July 2010)

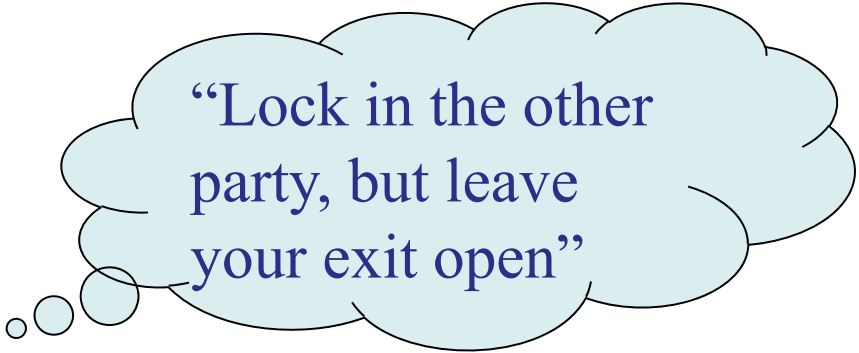
Reasons for Breakdown: The *Lis*



- Inadequate definition of scope
 - Questions around “corporate opportunity”
- Fundamental viability of the project in doubt
 - E.g., delays, lack of approvals
- Divergence of partners’ goals
- Financial crunch or insolvency affecting a JV partner

Reasons for Breakdown: The *Lis*

- Governance issues
 - Cultural considerations
 - Cross-border JVs
 - Ego clashes
 - Managerial hubris
 - Egregious circumstances
 - Fraud / dishonesty
 - Misappropriation of proprietary information
- Mismatched expectations re returns and exit
 - Sharing of profits
 - Mechanisms such as downside protection, assured return



“Lock in the other party, but leave your exit open”

Special Considerations in JV Disputes

- Reasonable minds can choose to disagree
 - Lack of a wrongdoer/victim paradigm
- Minor acts or omissions around a continuum rather than a material single act or omission
- Fact-heavy determination
 - Contemporaneous documentary evidence

Common Legal Tools

- Validity of the formation of JV
 - A matter of contract
- Legal character
 - Joint venture versus partnership
 - Existence (or otherwise) of fiduciary relationship
 - Lack of clarity in the JV Agreement
 - *Akshay Raheja v. Gopal Narang*, 2020 SCC OnLine Bom 5578
 - *Russell v. Cartwright*, [2020] EWHC 41 (Ch)

Common Legal Tools

- Resolving governance issues
 - Pooling agreement of shareholders
 - Fiduciary duties of directors
 - *Rolta India Ltd v Venire Industries Ltd*, 1999 SCC OnLine Bom 706
- Oppression, prejudice, mismanagement (NCLT)
 - *Vikram Bakshi v Connaught Plaza Restaurants Ltd.*, 2017 SCC OnLine NCLT 560
 - *Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd.*, 2021 SCC OnLine SC 272

Common Legal Tools

- Giving effect to exit mechanisms
 - Nature of mechanisms - downside protection
 - Foreign exchange considerations in cross-border transactions
 - Disputes before courts via arbitration
 - *Cruz City 1 Mauritius Holdings v. Unitech Limited*, 2017 SCC OnLine Del 7810
 - *NTT Docomo Inc. v. Tata Sons Limited*, 2017 SCC OnLine Del 8078
 - *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, (2020) 11 SCC 1

Common Legal Tools

- Enforceability of put and call options
 - *Edelweiss Financial Services Ltd. v. Percept Finserve Pvt. Ltd.*, 2019 SCC OnLine Bom 732
- Termination and post-exit matters
 - Non-compete
 - Non-solicitation
 - Contract law and competition law considerations

Common Reliefs

- Specific performance
 - E.g., sale and purchase of shares in the JV company
- Monetary reliefs
 - Damages
 - Account for profits
- Injunctive reliefs
 - For continuing breaches
- Potentially a winding-up action
 - In a corporate JV

THANK YOU