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|  | HOW TO form a Joint Venture between an Israeli company and a United States company |
|  | March, 2014 |
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1. What is a joint venture?
   1. Elements:

* an agreement indicating an intention to undertake a joint venture;
* a joint undertaking;
* a single project for profit;
* a sharing of profits as well as losses;
* a contribution of skills or property by the parties; and
* community interest and control over the subject matter of the enterprise.
  1. Common Venture Formats
* Separate entity

Creation of a separate entity venture in the form of a corporation, a limited liability company, or a limited partnership is accomplished by a filing with the state. A separate entity venture using the partnership format may be formed by contract or implied by law, and may also be registered with the county under the Uniform Partnership Act (UPA)

* Consortium

A consortium is a non-entity venture that is formed by contractual agreement.

* Master Subcontract

A master subcontract is also a non-entity venture that is formed by contractual agreement.

* 1. General partnership principals apply to the entity and its participants:
* The right and ability to bind and to create liabilities to third parties with respect to activities and transactions which are within the apparent scope of the business of the joint venture.
* Subject to unlimited liability from its own assets with respect to the obligations of the joint venture. Limited liability is most appealing when the purpose of the venture is, by its nature, somewhat risky. Eliminating the unlimited liability of the joint venture form may not be possible if third party creditors seek guarantees from the shareholders for the obligations of the business.
* Fiduciary obligations of good faith, honesty and fair dealing.

1. What law governs joint ventures?
   1. It is a matter for the contracting parties to decide. Where the parties have agreed upon a foreign law be applicable, an Israeli Court will usually apply such law. Israeli Courts will enforce substantive law as agreed upon in a contract, but in order to facilitate the trial, Israeli procedure will be applied.
   2. With international joint ventures, arbitration may be the only acceptable and viable dispute resolution method where all relevant parties to a dispute can appear and resolve their differences. Arbitration permits the resolution of international disputes in a neutral forum by independent decision makers.
2. What is an international joint venture?

International joint ventures involve joint venture partners from different countries who may conduct the venture in one of partner countries, in a third world country, or in multiple countries.

If the joint venture partner is a foreign entity joining with a United States company in a United States venture, the choice is between operating in the United States through a domestic branch of a foreign corporation or as a United States subsidiary.

1. How to terminate an international joint venture?
   1. Transfer of joint venture interest.
      * The bases to transfer shares should be addressed in the joint venture agreement.
   2. Sale of the company.
      * Sale of interests tends to maximize shareholder value since it requires independent valuations and appraisals for sources outside of the joint venture.
   3. Dissolution of the company.
      * Accomplished through arbitration.
2. What are the risks to consider with an international joint venture?
   1. Political – Consider the stability of the government in the country where the venture is to be performed.
   2. Currency – Does exchange control currency laws of the jurisdiction restrict payment of dividends or movement of capital?
   3. Local business – Existing or potential local competitors that the government provides special privileges to the detriment of the joint venture. Address risks by working with a politically connected local partner to obtain fairness in investment and local support.
   4. Legal – Contractual safeguards should be included the joint venture agreement, such as a choice of law provision.
   5. Selection of entity – Is the form of joint venture going to be a corporation, limited liability company or partnership?
3. What are some common contract provisions to include in international joint venture agreements?
   1. Division of ownership shares.
   2. Financial contribution of the parties to the capital.
   3. The jurisdiction where the joint venture is going to be formed (usually this determines the governing law).
   4. Identification of the business plan.
   5. Description of any ancillary contracts which are involved as a result of a contribution of assets, property, technology or services.
   6. Clarification of the balance of decision making powers between (i) the shareholders, (ii) board of directors, and (iii) individual executives of the joint venture.
   7. Terms for a party to sell its shares in the joint venture.
   8. Terms for bringing the joint venture to an end.

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