Guide to

Joint Ventures in India

Options, Regulations and Restrictions

for Foreign Nationals and Companies

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Notes:

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1. Introduction

India's economic growth is attracting business houses from across the world. Joint Venture is a popular method to enter a country whose legal and business environment is unknown. However, joint ventures face many hurdles – statutory as well as relationship centered.

Even after more than three decades of liberalization, India imposes restrictions on foreign investment in some sectors. Foreign companies also need to be aware of the corporate structures that they can choose when working in India. Sometimes a contractual joint venture is a better option than an equity-based joint venture. The choice of model of joint venture is, of course, determined by the objectives that the partners have and also whether they intend their relationship to be long term or short term.

This Guide attempts to throw light on the options available to foreign nationals and companies when entering into joint ventures in India.

As and when the Indian partner is selected and broad contours of the relationship underlying the joint venture have been firmed up, it is necessary to create the legal documents that will bind the parties together. At this stage it is necessary to draft, negotiate and execute a Shareholders' Agreement or Joint Venture Agreement. Surely, it is not easy to freeze the terms of a relationship to a well-drafted document that will stand the test of time. This Guide gives some key points that are critical in this regard.

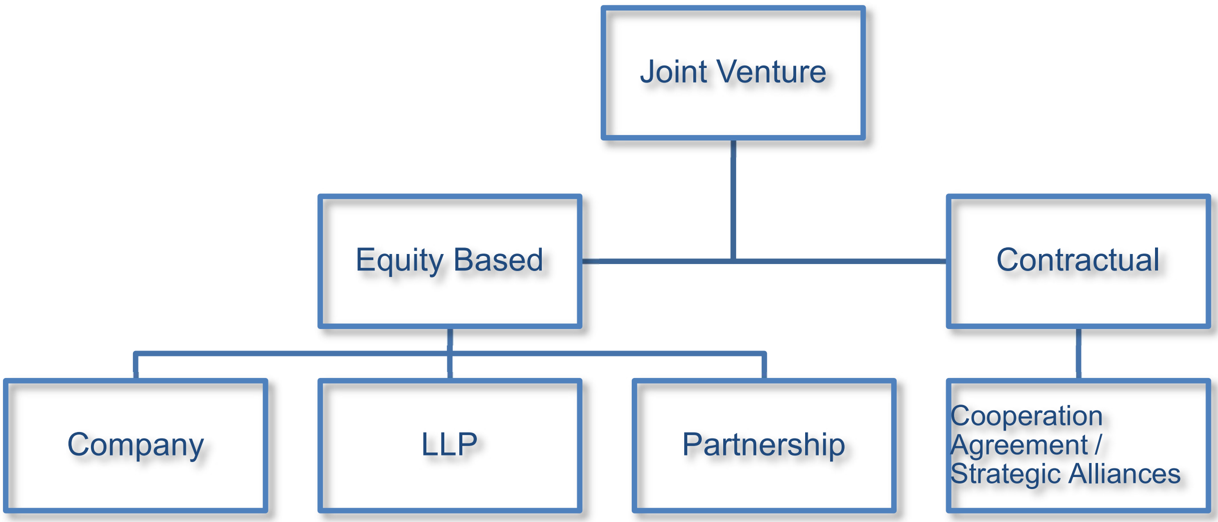
In India till a few years back, almost all equity-based ventures were structured in the form of a company. However, with the government permitting foreign investment in Limited Liability Partnership (LLP) Firms, there is significant interest in LLP firms.

Articles of Association is a most important document that controls the management and operations of a company. Generally, sufficient attention is not given to drafting of Articles. We give a brief write-up on the relevance of careful drafting of Articles in a joint venture company. In case of an LLP, Partnership Agreement determines the relationship between partners. We have tried to give some guidance about drafting of a Partnership Deed for an LLP firm.

2. Types of Joint Ventures

The two options available for establishing a joint venture in India are:

- ✓ Contractual joint venture
- ✓ Equity based joint venture



Contractual Joint Venture (CJV)

In a contractual joint venture, a new jointly-owned entity is not created. There is an agreement to work together but there is no agreement to give birth to an entity owned by the parties who are working together. The two parties do not share ownership of the business entity but each of the two parties exercises some elements of control in the joint venture. A typical example of a contractual joint venture is a franchisee relationship.

In a contractual relationship the key elements are:

a. Two or more parties have a common intention – of running a business venture

b. Each party brings some inputs

c. Both parties exercise some controls on the business venture

d. Typically, sharing of the surplus generated is by way of share in the top line (revenue) and not by sharing the bottom line (profits)

e. The relationship is not a transaction-to-transaction relationship but has a character of relatively longer duration.

Generally speaking, the above five can be called as the distinguishing characteristics of a Contractual Joint Venture as opposed to a Contractual Transaction-based relationship.

Foreign companies often resort to contractual joint ventures when they do not wish to invest in the equity capital of a business in India even though they wish to exercise controls and want to decide the shape that the venture takes. For example, a foreign company may have a Technology Collaboration agreement with an Indian company whereby the foreign company controls all key aspects of running the business. In such a case the foreign company may like to retain the option of taking equity at a future date in the Indian company run by its technology. This will mean that though to begin with the venture is a contractual joint venture, the parties may convert it into an equity based joint venture at a later date.

Equity Based Joint Venture (EJV)

An equity joint venture agreement is one in which a separate business entity, jointly owned by two or more parties, is formed in accordance with the agreement of the parties. The key operative factor in such case is joint ownership by two or more parties.

The form of business entity may vary – company, partnership firm, trusts, limited liability partnership firms, venture capital funds etc. From the point of a foreign company, the most preferable form of business entity is either a company or a limited liability partnership firm. We shall discuss this aspect in detail later in this Guide.

Generally speaking, in an equity based joint venture, the profits and losses of the jointly owned entity are distributed among the parties according to the ratio of the capital contributions made by them. However, the division of profits and losses is not the only characteristic of an equity-based joint venture. The key characteristics of equity-based joint ventures are as follows:

a. There is an agreement to either create a new entity or for one of the parties to join into ownership of an existing entity

b. Shared Ownership by the parties involved

c. Shared management of the jointly owned entity

d. Shared responsibilities regarding capital investment and other financing arrangements.

e. Shared profits and losses according to the Agreement.

It is not necessary that all the above five characteristics are fulfilled in every equity-based joint venture. For example, there are often agreements where one of the parties is investing but has no say in the management of the joint venture (JV) company.

There are also situations where a foreign company may want to exercise management control even though it is not investing in the JV company. Typically, if a foreign company is providing technology and other knowledge-based inputs, it may want to ensure that the JV company is managed as per its directions. In such cases the foreign company may retain an option to invest in the JV company at a future date. Such a structure may also be used by a foreign company to create a foothold for itself in a sector where Foreign Direct Investment (FDI) is either not allowed or is restricted.

3. Who Can Set Up Equity Based JV In India

Generally speaking, any non-resident entity can set up an equity based joint venture in India. However, some entities face restrictions under FDI Policy[1] of Government of India. The restrictions are as follows:

1. Beneficial owner of an investment or entity / citizen of a country that shares land border with India can invest only after approval of Government of India. Countries that share land borders with India are Pakistan, China, Nepal, Bhutan, Bangladesh, Myanmar and Afghanistan.

2. In addition to the above restrictions applicable to countries sharing land borders with India, citizen or entity of Pakistan cannot invest in defense, space, atomic energy and sectors prohibited for foreign investment.

3. NRI residents in Nepal and Bhutan as well as citizens of Nepal and Bhutan can invest on repatriation basis subject to investment coming in free foreign exchange (USD or EURO) through normal banking channels.

4. Foreign Portfolio Investors (FPI) may make investments in the manner and subject to the terms and conditions specified in Schedule II of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

5. Foreign venture Capital Investor (FVCI) may make investments in the manner and subject to the terms and conditions specified in Schedule VII of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

[1] Consolidated FDI Policy (Effective from 15October, 2020), Department for Promotion of Industry and Internal Trade (FDI Division), Ministry of Commerce and Industry, Government of India.

4. Forms of Equity Based JV

Every equity based joint venture gives birth to a new entity. Government of India permits certain type of entities and frowns upon some others when it comes to joint ventures between Indians and foreigners. Different types of entities and the government's attitude to them are summed up below:

- **Company** – A limited liability company is the most preferred structure for joint venture entities in India. Government also encourages investment being in the form of equity capital of a company incorporated in India. Companies in India are mainly of two types – private limited and public limited. There is **no minimum share capital prescribed either for private limited company or public limited company**. A private limited company must have at least two shareholders, while a public limited company must have seven shareholders. The only exception to this is a one-person company. The shareholders may be foreign citizens or foreign companies. Companies Act 2013 makes it mandatory that at least one director of every company is resident of India. The resident director need not be a citizen of India.

- **Partnership Firm** – Such an entity is NOT permitted for joint ventures by foreign residents in India in most of the cases. Exceptions are made in case of firms owned and controlled by Non-Resident Indians (citizens of India residing out of India). Generally speaking, a foreign company should not think of using partnership firm as a vehicle for a joint venture.

- **Limited Liability Partnership (LLP) Firm** – LLP Firm structure is regulated in India by The Limited Liability Partnership Act, 2008. Foreign investment in an LLP firm is allowed only in sectors / activities where 100% FDI is permitted through automatic route. LLP Firms are partnership firms with limited liability of partners. An LLP Firm combines the convenience of a partnership firm with the limited liability feature earlier found only in a company. An LLP Firm needs minimum two partners. It also requires minimum two Designated Partners out of which at least one should be resident of India. The two partners can also be appointed as Designated Partners. There is no requirement of minimum capital contribution to incorporate an LLP Firm.

- **Venture Capital Fund –** A duly registered Foreign Venture Capital Investor is allowed to invest subject to the terms and conditions specified in Schedule VII of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

- **Trusts –** A foreign company is not allowed to use Trust as a form of a joint venture entity in India.

- **Investment Vehicle –** SEBI has introduced regulations for some funds like Real Estate Investments Trusts, Infrastructure Investment Funds, Alternative Investment Funds. Such funds are now permitted to receive foreign investment from a person resident outside India.

- **Other Entities –** Foreign companies are not allowed to use any structures other than those mentioned above for the purpose of equity based joint venture entities.

To sum up one can say that **the most acceptable and convenient forms of equity based joint venture in India are a limited liability company and a limited liability partnership (LLP) firm**.

5. Comparison - JV Company vs. LLP vs. Contractual JV

<table>
<tr><th></th><th>Joint Venture Company</th><th>LLP Firm</th><th>Contractual Joint Venture</th></tr>
<tr><td>Liability</td><td>Limited
However, liability under torts may be unlimited as faced by Union Carbide in case of Bhopal Gas Tragedy</td><td>Limited
Liability may be unlimited in case of wrongful act/omission by the partner.</td><td>Limited by Contract
Liability under torts may be unlimited.</td></tr>
<tr><td rowspan="2">Complexity In Formation</td><td colspan="2">For foreign promoters, time is taken mostly for getting documents attested and time taken in courier of the said documents. These are required for getting Digital Signatures. Estimated time – 4 to 6 weeks.</td><td rowspan="2">Very low level of statutory regulation of contractual joint ventures. Zero lead time to start activities.</td></tr>
<tr><td>Company formation may take about 1 to 2 weeks after Digital Signatures have been obtained for all directors.</td><td>Easy incorporation process. May take about 1 week after Digital Signatures have been obtained for all partners.</td></tr>
<tr><td>Cost of Incorporation</td><td>More than Rs.35,000.
Depends on authorized share capital and the state where registered office is located.</td><td>Between Rs.15,000 - Rs.30,000</td><td>No incorporation cost.</td></tr>
<tr><td>Minimum Participants (Partners / Shareholders)</td><td>Two shareholders.
May be local residents or foreign residents.</td><td>Two Partners
May be local residents or foreign residents</td><td>Entry of participants depends upon the Joint Venture Agreement.</td></tr>
<tr><td>Maximum Participants (Partners / Shareholders)</td><td>Maximum 200 shareholders for private company. No limit for public company.</td><td>No maximum limit on number of partners.</td><td>Depends upon the form of organization with whom Joint Venture Agreement is made.</td></tr>
</table>

	Joint Venture Company	LLP Firm	Contractual Joint Venture
Capital	Capital investment made by the parties as per the JV Agreement. Subject to Sectoral caps prescribed by Government of India (discussed in next section)	Investment by partners as per the LLP Agreement. Investment is allowed only in sectors where 100% foreign investment is allowed under automatic route without conditions.	Depends on terms of contract. There are no constraints prescribed by Government of India.
Management Controls	As per the terms of the JV Agreement and Articles of Association of the Company. Statutory protection of rights of JV partners.	Partners jointly and severally control the activities. Rights and duties prescribed under the LLP Agreement.	As per the Contract. Limited statutory protection of rights.
Ownership	Ownership shared by the parties.	Ownership shared by partners to the extent of capital contributed by each of them.	Ownership is not shared.
Resident Director / Designated Partner	One Resident Director needed. An individual is resident of India if he / she stays in India for 182 days or more during the financial year. Resident need not be citizen of India. Not necessary for a director to hold any shares.	One Resident Designated Partner needed. An individual is resident of India if he / she stays in India for 182 days or more during the year. Resident need not be citizen of India. Not necessary for a designated partner to be partner.	Not Applicable
Government Approvals	Subject to Foreign Direct Investment Policy of Government of India, approval may either be automatic or need formal approval of Government of India (discussed in next section).	Investment permitted only through automatic route in sectors where 100% foreign investment allowed under automatic route without conditions.	Normally, no approvals are required. Contractual JV's are not permitted in the fields of gambling, betting and lottery.

	Joint Venture Company	LLP Firm	Contractual Joint Venture
Exit Route	Three options – either JV partner may buy the other; both partners may sell their shares to a third party; and the company may go for voluntary liquidation under Insolvency and Bankruptcy Code of India, 2016. In case the company has no operations, it may be possible to go for striking off the name.	May be wound up by the option of the parties and situations mentioned in the LLP Agreement. Winding up an LLP Firm is easy as compared to a company.	Subject to the terms of the contract.

6. LLP Firm as a Special Purpose Vehicle

A Limited Liability Partnership (LLP) Firm combines the simplicity of a partnership firm with the advantage of limited liability available in the case of a company. Before the passing of The Limited Liability Partnership Act in 2008, a foreign company intending to participate in a tender or some other project in consortium with an Indian company had only the option of setting up a company to use as a Special Purpose Vehicle (SPV). Using a company as an SPV has the disadvantage that a company is difficult to wind up. Foreign companies are not allowed to invest in partnership firms. Moreover, consortium members do not want to be saddled with unlimited liability as is the case in a partnership firm under The Indian Partnership Act, 1932. Earlier, foreign companies were not allowed to invest in any form of structure except a company. Foreign Investment in LLP firms is allowed in the areas where 100% foreign equity participation is allowed without any conditions.

LLP firm as an SPV between a foreign company and an Indian company has the advantage of being easy to wind up after the purpose is over and the liability of the two partner companies is limited. Key advantages of using an LLP firm as an SPV as compared to a company are as follows:

a) Low cost of incorporation of an LLP.

b) Flexibility of rules of governance based on Agreement between the Partners.

c) Partners can be companies while management is by Designated Partners who are individuals. This way ownership and management are separated.

d) Low annual maintenance cost.

e) Before the start of operations, there may be no need to get the accounts audited.

f) Share in profit that a partner gets from an LLP is tax free in the hands of the partner, while the dividend from a company is taxable. A company has a lower rate of taxation as compared to an LLP. But if one takes into account the tax on dividend, a company may not be advantageous as compared to an LLP.

g) Voluntary winding of an LLP firm which has no creditors is very easy and can be done without intervention of any court or tribunal.

Investment in LLP Firms is permitted only in sectors in which 100% FDI is permitted through automatic route without any performance linked conditions. Relevant extract from the FDI Policy reads as follows:

> FDI in LLPs is permitted subject to the following conditions:
>
> (i) FDI is permitted under the automatic route in Limited Liability Partnership (LLPs) operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions.
>
> (ii) An Indian company or an LLP, having foreign investment, is also permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions.
>
> (iii) Conversion of an LLP having foreign investment and operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions, into a company is permitted under automatic route. Similarly, conversion of a company having foreign investment and operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions, into an LLP is permitted under automatic route.
>
> (iv) FDI in LLP is subject to the compliance of the conditions of LLP Act, 2008.

So, an LLP is the recommended option if the following conditions are fulfilled:

a) The JV intends to operate in a sector where 100% FDI is permitted without any performance conditions. Some examples of such sectors are – horticulture, plantation, coal mining, oil and gas exploration, industrial parks etc.

b) The LLP Firm is intended to be wound up at some point of time in not-too-distant future.

Often a foreign company and an Indian company may decide to work together and explore opportunities together in India. They may participate in tenders and other government biddings etc. with uncertainty about the date of actual start of business. In such cases, an LLP firm may be an ideal choice. The LLP firm can keep exploring and if after a few months or years, the firm fails to strike any opportunity the LLP firm may be wound up without any difficult procedures.

Sometimes a foreign company and an Indian company may decide to jointly participate in a tender as a consortium. However, the two may be interested in forming an LLP only if the consortium is successful at the tender and is able to secure the contract. The parties are, generally speaking, not interested in creating a legal entity (LLP) if they fail to secure the contract in the tender. In such a case, it is advisable for the parties to execute an MOU which states their intention to form an LLP if they are successful at the tender. The MOU can be submitted along with the tender bid. Of course, this will depend on the terms and conditions for consortium stipulated in the tender. More on this is given in the next chapter.

7. Joint Venture for Participating in Tenders

Foreign companies often wish to participate in India's growth story by bidding against tenders issued by government departments or agencies or undertakings of India. The tenders usually prescribe some qualification criterion for eligible bidders. Forming a joint venture with an Indian company enables the foreign company to satisfy the qualification criterion.

Conditions prescribed by tender documents in India vary greatly. A few examples of the prescribed conditions are given in **Schedule A**.

एनएचपीसी
NHPC
A Navratna Company

Lot-I Package Uri-I Stage-II H.E. Project
Vol-0, NIT

NHPC LIMITED
(A Govt. of India Enterprise)
URI-I STAGE-II HYDROELECTRIC PROJECT (240 MW)
(UT OF J&K, INDIA)

एनएचपीसी
NHPC
एक नवरत्न कंपनी
CIN: L40101HR1975GOI032564

TENDER DOCUMENT
(Domestic Competitive Bidding)

A noticeable fact in some tenders is that the tender prescribes, "*The joint venture agreement should be registered, so as to be legally valid and binding on all partners*". Some tenders also mention a "registered joint venture agreement". Very often the persons who draft tender document do not know that (a) a joint venture agreement does not need to be registered under The Registration Act, 1908 and (b) registration of a document does not enhance its legal validity or binding force.

The problem faced by bidders against a tender is that mistakes committed by the persons who draft the tender have not only to be tolerated but have to be taken care of. So, even though a joint venture agreement does not need to be registered in India, companies have been finding ways to get joint venture agreements registered. In the absence of any clear legal method of registration of JV agreements under law, the view of the concerned officer of the tendering agency becomes the final view that must be humored. Some of the methods used for registration of joint venture agreements are as follows:

a) Submitting the JV Agreement to the concerned sub-registrar of the district and getting it registered under The Registration Act, 1908. Cost involved is nominal.

b) Converting the JV Agreement into a Limited Liability Partnership Agreement and getting an LLP firm registered.

c) Incorporating the JV Agreement into Articles of Association of the JV company and getting the company incorporated.

It may be mentioned here that the condition of a registered JV Agreement is found only in tender documents of some states. Obviously, someone who did not know law very well wrote it a few years ago and it has carried on becoming a standard condition in tender documents of a few states. We hope that better sense will soon prevail in those states and authorities issuing tenders will modify their tender documents.

The key points of action for foreign companies wishing to participate in government tenders in India can be summed up as follows:

➢ Please study carefully the tender conditions related to joint venture / consortium in tender documents usually issued by the department or agency or authority whose tenders you wish to participate in.

➢ Most of the conditions prescribed in the tender document will need to be incorporated in the joint venture agreement.

➢ While negotiating with prospective JV partners, it is necessary to keep the tender conditions in mind. For example, if the tender document states that each JV partner should have at least 26% share, it is futile to negotiate a JV Agreement where your partner has less than 26% share.

- Generally speaking, many tenders allow a JV Agreement or MOU to be submitted with the techno-commercial bid. A special-purpose-vehicle or joint venture entity may be formed after the bid is successful. If the tender permits so, the JV Agreement / MOU should be submitted with the bid and it should be clearly mentioned that a JV LLP / Company will be formed after the bid is successful.

- Some tenders do not prescribe creation of a new JV entity (LLP or company). The tenders assume that the JV entity will be a non-incorporated consortium with a lead partner and one or more other partners. In such a case, the JV consortium is not a legal entity, but has a bank account and is managed as per the terms and conditions of the JV Agreement. Such a non-incorporated JV consortium will be treated as an Association of Persons (AOP) under the Income Tax Act. Foreign companies are not allowed to invest / participate in an AOP. So, if you are a foreign company and you come across such a tender from an Indian public sector company, it is advisable to write to the tender issuing public sector company and insist that the tender conditions be amended to allow incorporated JV entity (LLP or company) to participate in the tender.

- In some cases, the tendering authority wants the JV LLP / Company to be formed prior to the submission of bid. This creates a problem for unsuccessful bids. One does not want to have in one's portfolio stillborn companies formed for submission of bids which in due course failed to materialize. The problem can be solved by two ways – (a) Form an LLP firm that can be wound up easily when the bid fails (b) Keep shell companies in one's portfolio; the shell companies can have very small capital and shareholders & directors may be changed as may be required with each JV Agreement submitted with different tenders.

To sum up, it may be said that forming a joint venture for the purpose of bidding against a tender is a complex process that needs thorough study of the tender document along with understanding of the business needs of the joint venture partners.

8. Prohibited Sectors / Countries for Equity-based JV

Foreign companies are not permitted to establish joint ventures in the following areas:

- Lottery Business including Government/private lottery, online lotteries, etc.
- Gambling and Betting including casinos etc.
- Chit Funds
- Nidhi Company
- Trading in Transferable Development Rights
- Real Estate business or construction of farm houses; 'Real estate business' shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts.
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
- Activities / sectors not open to private sector investment e.g. Atomic Energy and Railway Operations (excluding permitted areas of Railway Infrastructure)
- Foreign collaboration in any form for lottery business, gambling and betting activities.

Beneficial owner of an investment or entity / citizen of a country that shares land border with India can invest only after approval of Government of India. Countries that share land borders with India are Pakistan, China, Nepal, Bhutan, Bangladesh, Myanmar and Afghanistan.

9. Automatic Approval Route Sectors

For most sectors, investment by a foreign company is under automatic approval route. In such sectors, the banker of Indian company receiving investment receives an application addressed to Reserve Bank of India (RBI). The approval of RBI is deemed to be granted from the date of receipt of the application by the banker.

It should be noted that foreign direct investment up to 100% of the equity capital of Indian company is permitted in all sectors / activities which are not listed in the FDI Policy of Government of India. Such investment is permitted through the automatic route. However, it is subject to laws / regulations; security and other conditions as applicable to such sectors / activities in India.

As mentioned earlier, investment in LLP Firms is permitted only in sectors in which 100% FDI is permitted through automatic route without any performance linked conditions.

Examples of sectors in which 100% of Indian company is allowed to be held by foreign company are as follows:

- Floriculture, Horticulture, and Cultivation of Vegetables & Mushrooms under controlled conditions; (LLP route allowed).

- Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, Apiculture, under controlled conditions (LLP route allowed).

- Tea, coffee, rubber, cardamom, palm oil and olive oil plantations (LLP Route allowed).

- Development and production of Seeds and planting material (LLP route allowed).

- Services related to agro and allied sectors (LLP route allowed).

- Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores (LLP route allowed).

- Coal & Lignite mining and Setting up coal processing plants (LLP route allowed).

- Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector (LLP route allowed).

- Manufacturing including contract manufacturing; A manufacturer is allowed to sell its products (excluding food products) through wholesale or retail or ecommerce (LLP route allowed).

- Up-linking of non-'News and Current Affairs' TV channels / Down-linking of TV channels (LLP route not allowed).

- Teleports, Direct to Home (DTH), Cable Networks, Mobile TV, Headend-in-the Sky Broadcasting Service (LLP route allowed).

- Airports – Greenfield projects and Existing Projects (LLP route not allowed).

- Non-scheduled air transport services (LLP route not allowed).

- Helicopter services/seaplane services requiring DGCA approval (LLP route not allowed).

- Maintenance and Repair organizations; flying training institutes; and technical training institutions in the area of civil aviation (LLP route not allowed).

- Ground handling services in the field of civil aviation (LLP route not allowed).

- Construction-development projects including development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships (LLP route not allowed).

- Real estate broking service (LLP route allowed).

- Industrial Parks – New and Existing (LLP route not allowed).

- Cash & Carry Wholesale Trading / Wholesale Trading (including sourcing from MSME's) (LLP route not allowed).

- E-Commerce Activities (B-2-B or marketplace model) (LLP route not allowed).

- Single Brand Product Retailing (LLP route not allowed).

- Duty-free Shops (LLP route not allowed).

- Railway Infrastructure (LLP Route not allowed).

- Asset Reconstruction Companies. (LLP route allowed).

- Credit Information Companies (LLP route not allowed).

- Non-Banking Financial Companies.

- Financial Services activities regulated by financial sector regulators, viz., RBI, SEBI, IRDA, PFRDA, NHB or any other financial sector regulator as may be notified by the Government of India. (LLP route not allowed).

- Pharmaceuticals – Greenfield (LLP route allowed).

There are conditions prescribed for the areas where LLP route is not allowed. In cases where we have mentioned that LLP route is allowed, it is our opinion that the conditions prescribed are not "FDI-linked performance conditions". However, the authorities may well take a different view. In all cases, it is necessary that one consults the FDI Policy of Government of India and the concerned authorities for specific conditions applicable to one's chosen area of activity.

Notably, any activity that is not listed in FDI Policy is considered as a sector where 100% FDI is allowed under automatic route.

In addition to the above sectors (where 100% foreign direct investment is permitted) there are other sectors where **lower limits are prescribed** even though the **approval process is automatic**.

10. Government Approval Route Sectors

There are some sectors / activities where the approval for investing in an Indian company has to be obtained from Government of India. The process of granting approval is handled by the respective administrative ministry.

There are sectors where 100% foreign direct investment is permitted but Government approval is required. Examples of such sectors are as follows:

- Mining and mineral separation of titanium bearing minerals & ores, its value addition and integrated activities.
- Publishing / printing of Scientific and Technical Magazines / specialty journals / periodicals.
- Publication of facsimile edition of foreign newspapers.
- Satellites - establishment and operation.
- Pharmaceuticals – Brownfield (74% under automatic route).

Apart from the sectors mentioned above in which 100% investment is allowed by a foreign company with the approval of the Government, there are some sectors in the Government entry route with lower limits. Examples of such sectors are as follows:

Sector	Permitted Percentage of Foreign Investment	Remarks
Terrestrial Broadcasting FM (FM Radio)	49%	Government approval
Up-linking a News & Current Affairs TV Channel	49%	Government approval

Sector	Permitted Percentage of Foreign Investment	Remarks
Uploading / Streaming of News & Current Affairs through Digital Media	26%	Government approval
Publishing of Newspaper and periodicals dealing with news and current affairs	26%	Government approval
Publication of Indian editions of foreign magazines dealing with news and current affairs	26%	Government approval
Private Security Agencies	74%	Government Approval beyond 49% and up to 74%
Multi Brand Retail Trading	51%	Government Approval
Banking –Private sector	74%	Automatic up to 49% Government route beyond 49% and up to 74%
Banking- Public Sector	20%	FDI and Portfolio Investment

FDI – Foreign Direct Investment
FPI – Foreign Portfolio Investor
NRI – Non-Resident Indian

All the above sectors are subject to various regulations / guidelines / conditions. Readers are advised to refer the relevant regulations / guidelines / conditions issued by various Ministries along with the Consolidated FDI Policy.

11. Approval for Technology Transfer, Brand Name Use, Royalty Payment etc.

Agreements for Technology Transfer, Use of Brand Name, Royalty Payment etc. are accorded approval by automatic route. In other words, such agreements do not need any prior permission from either the government or the Reserve Bank of India.

Before 2009, Government of India regulations used to limit the royalty that could be paid to a foreign collaborator / brand owner. The restrictions were removed vide Press Note No. 8 (2009) dated 16th December 2009.

From 2009 to 2010, royalty and fees under technology collaboration agreements were regulated by Foreign Exchange Management (Current Account Transaction) Rules, 2000. However, the restrictions were removed by Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2010 vide Notification No. GSR382(E) dated 05.05.2010 w.e.f. 16.12.2010.

As on date, there are no limits or restrictions either on royalty or fees under technology transfer agreements.

12. Documents for Joint Ventures

Finalization of a joint venture goes through many stages. The first may be called courtship when the two partners flirt with each other without any commitment. The second may be called the engagement phase when there is a level of commitment but still it is not very firm or long-term. The final stage can be compared to a marriage.

Documentation at each stage is different. Generally speaking, Indian companies wish to have a Memorandum of Understanding (MOU) to define the relationship at the courtship stage. The MOU is a brief document without much legal jargon. The MOU states the duties of both parties and lays down a road map for the future. It is also customary to have a Non-Disclosure Agreement (NDA) at this stage of relationship. An NDA often precedes the MOU.

During the engagement phase, a Contractual Joint Venture may be envisaged. The parties are putting in relatively higher amounts of resources at this stage. Hence, it is advisable to have well-drafted legally binding contracts. The contracts are generally of a fixed duration or are related to specific events like getting an order or achieving certain sales volumes.

At the marriage stage, the parties have developed higher confidence in each other. So, an equity-based joint venture is considered. The documentation for an equity Joint Venture must take into account all possibilities that may arise over a fairly long period of time. Hence, the Joint Venture Agreement or Shareholders' Agreement or LLP Partnership Deed must be prepared very carefully to avoid any confusion even many years down the line.

Generally speaking, most equity Joint Ventures in India are structured in the form of private or public limited liability companies. In a company, Articles of Association is a very important document. Companies Act, 2013 gives the promoters freedom to draft the articles as per their requirements. It is hence, advisable to devote time and attention to the Articles and not depend on a standard off-the-shelf draft, especially in case of a joint venture company where one of the partners is a foreign national / company.

13. Key Points of a Shareholders' Agreement /Joint Venture Agreement / LLP Deed

Before one starts to draft a Shareholders' Agreement (SHA) (often called Joint Venture Agreement in India) or an LLP Partnership Deed (PD), one must realize that the SHA / PD is not a document for the government or the courts. SHA / PD is a working document and should be drafted with business essentials in focus. Sadly, lawyers / attorneys / advocates rarely have an understanding of business. So, the entrepreneur or top management must get involved in preparing the SHA / PD. One surely needs professional help in drafting an SHA / PD. However, beware of a legal professional who has no experience of business and is only adept at steering his clients through courts.

The key questions that an SHA / PD must address are common-sense ones that any entrepreneur is bound to ask when he / she joins hands with another entrepreneur. Examples of such questions are as follows:

- Who will bring in what resources – monetary, manpower, technology, management systems?
- What business will the new company / LLP Firm be engaged in?
- How will the Board of Directors (Designated Partners) be constituted?
- How will the Board of Directors (Designated Partners) decide matters – by majority vote / by consensus?
- Who will be the Chairman / Chairperson of the company?
- Who will be the Managing Director of the company / Managing Designated Partner of LLP Firm? What will be the powers of the Managing Director / Managing Designated Partner?
- Will decisions related to capital expenditure be taken by the Board of Directors (Designated Partners, in case of LLP Firm) or by the JV partners?

- Will there be decisions that will be taken only at the level of the promoters / partners (persons who sign the SHA / PD) and not at the level of the Board of Directors (Designated Partners)?
- Who will control finance? Who will sign the cheques?
- Who will be responsible for marketing?
- Who will be responsible for technical matters like selection of machinery, choice of technology, production planning etc.?
- Who will decide about future expansion projects or major capital expenditure?
- Will the promoters / partners communicate only at meeting of Board of Directors (Designated Partners) or will there be some other meetings between promoters only?
- What happens if one of the promoters / partners is not able or not willing to fulfill his commitments in the SHA / PD?
- What will be the Schedule of activities? What happens if there are slippages from the Schedule?
- How to resolve differences that might arise between the promoters / partners?
- What will be the Exit Route for one or both of the promoters / partners?
- What happens after the promoters / partners fall out? How to decide the price of equity shares / value of enterprise at the time of separation?
- In case of agreements involving individual(s), what happens in case of death or similar situation involving the individual? Will the legal heirs step into the shoes of the deceased or will the remaining partners buy out the share of the deceased?

- In case of agreements involving company / companies, what happens if one of the companies is acquired or goes insolvent?

The above examples are indicative and are not exhaustive. Obviously, the questions and answers that are critical to a particular business enterprise are unique to that enterprise.

If you are an entrepreneur or a key management person involved in preparing an SHA / PD, please list the key questions and answers that appear to you most critical. At this stage there is absolutely no need for any legalese or format or structure. Once the key critical points have been listed, it is time to ask a professional to take over.

It is the legal professional's job to convert your key points into an SHA / PD. However, even though the professional may be the world's best, an SHA / PD is too important a document to be left only to the professional. Please do read it yourself and check if each of the key points has been adequately addressed.

Often legal professionals have a tendency to draft in a language that only they can understand. If you have been unfortunate to get such a legal professional, please tell him / her politely that the SHA / PD is a working document between entrepreneurs / business persons and is not a court document. If the learned professional obliges you with a draft that you and your potential partner can understand, you can go ahead. On the other hand, if he / she persists with long sentences that seem to go on endlessly and a structure that gives you headache, it is time for you to get a different professional to assist you.

14. Essential Parts of a Joint Venture Agreement

There is no legally prescribed format for a joint venture agreement in India. However, it is advisable for a joint venture agreement to have the following parts:

- **Description** – These are the first few opening lines in an agreement.

- **Parties** – It is important to mention names, addresses and some identifying numbers (Aadhar or PAN or CIN or LLPIN).

- **Recitals** – These describe the situation before the agreement and mention the intentions of the parties in coming together.

- **Operative Part** – This is the heart of the agreement and states what the parties have agreed to.

- **Legal Part** – These clauses take care of legal issues such a jurisdiction, arbitration, amendment of the agreement, duration, termination, confidentiality, post-termination obligations, indemnification, force majeure etc.

- **Execution Page** – This is the place where the parties put their signatures.

- **Date & Place** – The date of execution of the agreement and the place where it is executed is duly noted.

For a detailed exposition of the above parts of an agreement, please see our guide **Drafting of a Shareholders' Agreement / Joint Venture Agreement** available at https://indialegalhelp.com/files/draftingsha.pdf

15. Articles of Association

Shareholders' Agreement (SHA) is a working document that defines relations between promoters who decide to come together and give birth to a new company. Legal status of SHA may vary from case to case. There is no law in India that determines the enforceability of SHA's in specific terms.

A company's Articles of Association are binding on the shareholders of the company. The enforceability of Articles of Association is in terms of the provisions of Companies Act, 2013. It is hence advisable to make sure that Articles of Association of the Joint Venture (JV) company are properly drafted to reflect the wishes of the promoters as articulated in the SHA.

Surely, there can be no general rules that apply to all possible situations. Some of the points that deserve attention in a JV Company's Articles are as follows:

- Method of decision in a meeting of Board of Directors – by consensus or majority, with or without casting vote.

- Method of decision in a General Meeting – by consensus or majority, with or without casting vote.

- Powers of the Board of Directors with regard to Notice for General Meeting, Special Resolution, Issue of Shares, Transfer of shares etc.

Articles of Association can be used by one or both promoters for "entrenchment". The possibilities are indeed endless.

Unfortunately, not many company secretaries who routinely handle incorporation matters understand the ways that Articles of Association can be used as an extension of the SHA. It is hence advisable that Articles of Association are also drafted by the legal professional who is involved with preparation of the SHA.

16. Procedures and Costs of Incorporation

As discussed earlier, the most convenient forms of equity based joint venture in India are a limited liability company and a limited liability partnership. This section gives in brief the procedure and costs involved in incorporation of company and LLP.

Note: Procedures of incorporation and related processes are in a state of flux in India. Government of India is constantly trying to simplify processes and procedures for improving the Ease of Doing Business in India. Hence, as and when you go for incorporation, the actual procedures, costs and processes may be drastically different from the ones given in this chapter. Kindly consult a Practicing Company Secretary or other professional for the correct relevant procedure, cost and process.

I. Digital Signature and DIN / DPIN

Each of the promoters of an Indian company must have a digital signature, which is to be purchased from a company in India. In case of foreign shareholders and directors, key documents required for getting a digital signature are photo, scanned copy of proof of identity and proof of address.

Each of the first shareholders and directors / designated partners of the new company / LLP firm needs to get Director Identification Number (**DIN**) or Designated Partner Identification Number (**DPIN**). One person can have only one DIN /DPIN. It is an offence to get more than one DIN / DPIN.

Once the digital signature is obtained, the Indian professional involved with incorporation of the Indian company can help with getting the DIN / DPIN. Often the application for DIN will be part of the documents submitted for incorporation of the company.

The Practicing Company Secretary who is handling company incorporation for you will coordinate with a suitable vendor for getting the digital signature and will do the necessary formalities for getting DIN.

II. PAN for Indian Citizens

Foreign citizen shareholders and directors do not need a PAN from Income Tax Department of Government of India.

Each of the first shareholders / directors / designated partners, who are Indian citizens (including non-residents) of the new company / LLP Firm needs to get a Permanent Identification Number (PAN) from Income Tax Department of Government of India.

We suggest that an Indian citizen (who wishes to set up a company / LLP in India) should first get either an AADHAR (most Indians already have one). Once AADHAR is obtained, application for PAN becomes a simple online process.

The agencies for issue of PAN are as follows:

- ✓ Tax Information Network of Income Tax Department
  https://tin.tin.nsdl.com/pan/form49Adsc.html
- ✓ UTI infrastructure Technology and Services Ltd.
  https://www.pan.utiitsl.com/PAN/newA.html
- ✓ Instant E-PAN through Income-tax E-filing Portal
  https://www.incometax.gov.in/iec/foportal

Please remember that no other person or agency can issue PAN. Any website or person who claims to provide PAN may be a fraud.

III. Steps for forming a limited liability company

- Decide the state in which the registered office of the company will be located. While it is easy for a company to change the registered office within a state, it is cumbersome and expensive to shift from one state to another.

- Decide the Authorized Capital of the proposed company. There is no minimum or maximum prescribed capital for a company.

- Decide whether the company will be a private limited company or public limited company.
- Decide the main objects of the company.
- Select, in order of preference, at least one suitable name up to a maximum of six names, indicative of the main objects of the company.

Once the above decisions have been made, further procedure for registration of a company need the services of a Practicing Company Secretary. It is advisable to tell the Company Secretary the proposed authorized share capital, the state in which the company is proposed to be incorporated, number of first shareholders / directors and whether the proposed company will be a private limited or public limited. Based on this information, the Company Secretary will be in a position to give an offer for the total costs including fees payable to the Government, stamp duty, other expenses and his / her fees.

The above steps do not include the formalities that one needs to complete with Reserve Bank of India even when the investment is under 100% Automatic Approval Route.

IV. Quick Easy Approach for Foreign Companies And Citizens

Often a foreign company / citizen or Non-Resident Indian wishes to start operations in India very quickly. Delays in getting digital signature may lead to the company incorporation process getting delayed. During such times, it may be a good option to follow the following steps:

- Two Indian resident-citizens (A and B) who already have PAN and DIN incorporate an Indian company with the name, objects and authorized capital as required by the promoter based abroad.
- A and B are the initial directors of the new Indian company.

- As and when the foreign promoter has completed all the formalities related to DIN etc., A and B transfer all shares held by them in the new company to the foreign promoter.

- After transfer of shares, new directors are appointed. Immediately thereafter, both A and B resign as directors.

- In case it is so required, either A or B can continue as a director to comply with the requirements of resident director.

- Either A or B or both can continue to hold one share each of Rs. 10 as long as so required by the foreign promoter. This can make it easy to hold Annual General Meetings without incurring travel costs.

Foreign promoter does not have to travel to India for completing the above formalities. By following the above procedure, it is possible to create and own a company in India without ever stepping on Indian soil.

The above easy approach is of particular relevance in case of joint ventures. A foreign company may ask their Indian partners to incorporate the company and join in later.

V. Cost of Incorporating a Limited Liability Company

Cost of incorporating a company is related to the authorized capital of the company and the state in which the registered office of the company is located. Indicative costs for incorporating a private limited company are given below.

Authorized Share Capital	Cost Of Incorporation of Private Limited Company			
	Delhi	Maharashtra	Gujarat	Madhya Pradesh
	Rupees			
Rs. One Million	76,810	77,400	80,220	82,610
Rs. Ten Million	2,25,410	2,30,500	2,60,320	2,25,710
Rs. Hundred Million	8,35,410	8,85,500	11,85,320	8,35,710
Rs. One Billion	67,60,410	72,60,500	57,60,320	57,60,710

Note: The above figures give an indicative estimate. Actual costs may vary.

The cost of incorporating a public limited company will be nominally higher than a private limited company (Difference in cost is likely to be more than Rs. 5,000).

It is not difficult to increase the authorized share capital by paying the difference in fees. However, if share capital is coming by way of foreign investment and is subject to government approval (as against automatic approval by Reserve Bank of India), significant time may be consumed for getting approval of government for increase of authorized share capital.

VI. Steps for forming a Limited Liability Partnership

Every LLP Firm must have at least two Partners and two Designated Partners. The Partners can be Designated Partners.

- Decide the state in which the registered office of the LLP Firm will be located. It is easy for an LLP Firm to change the registered office within a state. It is not very difficult to change the location of office of an LLP Firm even when the change involves moving from one state to another. The procedure for change in location of office will be as provided in the LLP Agreement.

- Decide the Contribution (capital) to be contributed by each of the partners.

- Decide the main objects of the LLP Firm.
- Select, in order of preference, at least one suitable name up to a maximum of six names, indicative of the main objects of the LLP Firm.

As in the case of incorporating a company, once the above decisions have been made, further procedures for registration of an LLP firm need the services of a Practicing Company Secretary. It is advisable to tell the Company Secretary the information mentioned above. Based on this information, the Company Secretary will be in a position to give an offer for the total costs including fees payable to the Government, stamp duty, other expenses and his / her fees.

VII. Cost of Incorporating an LLP

Cost of incorporating a LLP Firm is related to the capital of the LLP Firm and the state in which the registered office of the LLP Firm is located. Indicative costs for incorporating a LLP Firm are given below.

Capital	Cost Of Incorporation of Limited Liability Partnership			
	Delhi	Maharashtra	Gujarat	Madhya Pradesh
	Rupees			
Rs. 10,000-	18,900	19,300	18,900	20,800
Rs. One Million	37,400	42,400	42,400	42,400
Rs. Ten Million	48,450	58,450	53,450	53,450
Rs. Hundred Million	53,450	63,450	58,450	58,450
Rs. One Billion	87,650	97,650	92,650	92,650

Note: The above figures give an indicative estimate. Actual costs may vary.

Schedule A – Examples of Tender Conditions for JV

A1. Coal India Limited – May 2025[2]

2.3 Joint Venture: Two or three companies/contractors may jointly undertake contract/contracts. Each entity will be jointly and severally responsible for completing the task as per the contract **(applicable for bids having estimated cost above Rs.2 Crores)**.

Joint Venture details:

Name of all partners of a joint venture (not more than 3):

1. Lead partner
2. Partner
3. Partner

Note - The participating share of JV Partners shall be as below;

i) Lead Partner shall have at least 50% participating share in JV.

ii) Other partner(s) shall have at least 20% participating share in JV.

Joint Venture must comply the following requirements:

i) Following are the minimum qualification requirements for Joint Venture

a) The qualifying criteria parameter e.g. experience of the individual partners of the J.V will be as been deliberated in Notice Inviting Tender ITB towards fulfilment of qualification criteria related to experience.

b) The qualifying criteria parameter e.g. financial resources (Working Capital) of the individual partners of the J.V. will be added together, for the relevant period, and the total criteria should not be less than as deliberated under Notice Inviting Tender towards fulfilment of qualification criteria related to Working Capital.

ii) The formation of joint venture or change in the Joint Venture character/ partners after submission of the bid and any change in the bidding regarding Joint Venture will not be permitted.

iii) The bid, and in case of a successful bid, the agreement, shall be signed so as to legally bind all partners jointly and severally and any bid shall be submitted with a copy of the Joint Venture Agreement providing the joint and several liabilities with respect to the contract.

iv) The pre-qualification of a Joint Venture does not necessarily pre-qualify any of its partners individually or as a partner in any other Joint Venture or association.

v) The bid submission must include documentary evidence to the relationship between Joint Venture partners in the form of JV Agreement to legally bind all partners jointly and severally for the proposed agreement which should set out the principles for the constitution,

[2] Tender Document - NIT no.: CIL/CIVIL/RH-24/2025-26/1710 dated 13th May 2025, TD. No.: 2025-26/01, Civil Engineering Division, Coal India Limited, Kolkata

operation, responsibilities regarding work and financial arrangements, participation (percentage share in the total) and liabilities (joint and several) in respect of each and all of the firms in the Joint Venture. Such JV Agreement must evidence the commitment of the parties to bid for the facilities applied for (if pre-qualified) and to execute the contract for the facilities if their bid is successful.

vi) One of the partners shall be nominated for being in charge of the contract and shall be designated as Lead Partner. This authorization shall be evidenced by submitting with the bid a Power of Attorney signed by legally authorized signatories of all the partners.

vii) The JV Agreement must provide that the Lead Partner shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the Joint Venture and the entire execution of the contract shall be done with active participation of the Lead Partner.

viii) The contract agreement should be signed by each Joint Venture Partners. Subsequent declarations/ letters/ documents shall be signed by lead partner authorised to sign on behalf of joint venture or authorised signatory on behalf of JV.

ix) The bid should be signed/ digitally signed by the DSC holder submitting the bid.

x) An entity can be a partner in only one Joint Venture. Bid submitted by Joint Venture including the same entity as partner will be rejected.

xi) The JV agreement may specify the share of each individual partner for the purpose of execution of this contract. This is required to fulfil eligibility and also for the purpose of apportioning the value of the contract to that extent to individual partner for subsequent submission in other bids if he intends to do so for the purpose of the qualification in that Bid.

xii) The earnest money / Bids Security can be submitted by the Joint Venture / one or more partners of the joint venture.

xiii) The JV agreement must specifically state that it is valid for the project for which bidding is done. If JV breaks up mid-way before award of work and during bid validity period bid will be rejected. If JV breaks up midway before award of work and during bid validity/after award of work/during pendency of contract, in addition to normal penalties as per provision of bid document, all the partners of the JV shall be debarred from participating in future bids for a minimum period of 12 months.

xiv) JV agreement shall be registered in accordance with law so as to be legally valid and binding on the members before making any payment.

xv) JV shall open a Bank Account in the name of JV and all payments due to the JV shall be credited by employer to that account only. To facilitate statutory deductions all statutory documents like PAN/GSTIN, etc. in the name of the Joint Venture shall be submitted by JV before making any payment.

A2. Manual for Procurement of Works, Second Edition, 2025[3]

Annexure 13: Template for Qualification Criteria for Joint Ventures

Qualification for Joint Ventures(Refer para 3.9.1-4-g)

As mentioned under para 4.6.2-3 above, incertaincases of high value works procurement, the Joint venture firms are allowed to participate. The procuring entity may seek for the following requirements preferably, for the JV firms to meet:

i) Separateidentity/nameshallbegiventotheJoint Venture.

ii) Ideally, a Joint Venture (JV) should have no more than three members, but a maximum of five members can be allowed. Among the members, one must be the Lead Member, holding at least 51% of the interest in the JV. Other members should have a share of at least 20% each in JVs with up to three members or 10% each in JVs with more than three members. If there are foreign members in the JV, the Lead Member must be an Indian firm/company with a minimum share of 51%.

iii) A member of the JV cannot participate in the same tender as an individual or as part of another JV.

iv) The tender form should be obtained and submitted in the name of the JV, not any individual member. However, the tender form can be submitted by the JV, any of its constituent members, or a person authorized by the JV through a Power of Attorney.

v) The Bid Security/Earnest Money Deposit (EMD) should be deposited in the name of the JV by either the JV itself or an authorized representative. If the JV has not been legally established by the tender submission date, the Bid Security can be submitted in the name of all JV members as per the MOU, regardless of each member's share in the JV.

vi) The procuring entity should seek the MOU signed between the members of the Joint Venture (JV) in the tender document. The MOU should include all the important information about the JV members, like who they are, how they'll share responsibilities and financial commitments, and what they're responsible for in terms of technical matters and other obligations.

vii) Once the tender is submitted, the Memorandum of Understanding (MoU) should not be altered during the tender's validity. Failure to comply may result in the forfeiture of the full Bid Security/Earnest Money Deposit (EMD). Changes to the composition of the Joint Venture (JV) after tender submission and during the contract are generally not allowed, except when necessary due to legal requirements, with the condition that the minimum eligibility criteria of the JV remain unaltered. The Lead Member of the JV must remain constant. Non-compliance with these rules will render the offer invalid.

[3] Manual for Procurement of Works, Second Edition, 2025, March 2025, Department of Expenditure, Ministry of Finance, Government of India

viii) When a contract is awarded to a Joint Venture (JV), the JV should provide a single Performance Guarantee as required by the tender conditions. It's important to note that all guarantees, such as the Performance Guarantee, Bank Guarantee for Mobilization Advance, Machinery Advance, etc., should be issued in the name of the JV as a whole. Dividing or splitting these guarantees among individual JV members should not be allowed.

ix) Upon receiving the Letter of Acceptance (LOA), the Joint Venture (JV) entity to which the contract has been awarded, with the same ownership structure as declared in the MOU/JV Agreement submitted with the tender, must be officially registered. The type of registration will depend on whether the JV entity is becoming a Company under 'The Companies Act - 2013,' a Partnership Firm under 'The Indian Partnership Act, 1932,' or an LLP under 'The LLP Act 2008.' A separate PAN (Permanent Account Number) should also be obtained for this entity.

x) All relevant documents, including the PAN, must be provided to the procuring entity before the contract agreement is signed. Failure to comply with this requirement within 60 (sixty) days of receiving the LOA may result in contract termination. If the contract is terminated, the procuring entity may forfeit the entire Bid Security/Earnest Money Deposit and other dues owed to the Contractor under the contract. The registered entity should include specific clauses as specified in the registered documents.

xi) The entity to which the contract is awarded shall have joint and several liability, meaning that all members are equally responsible for executing the project in accordance with the General and Special Conditions of Contract. They are jointly and individually liable for any losses or damages caused to the procuring entity during the contract's execution or due to non-execution. The registration of the entity remains valid throughout the contract, including any extensions and the maintenance period after project completion. The entity must comply with Indian laws and regulations in all aspects of its operations under the contract.

xii) In the context of Joint Ventures, certain authorizations and restrictions apply. The members of the Joint Venture are required to appoint a Lead Member from within the JV members, who shall be acting as the authorized member of the JV and will represent the JV in dealings related to the tender. The Lead member/ authorized member is responsible for actions such as signing the agreement, entering into the contract, receiving payments, witnessing joint measurements of work completed, and signing measurement books pertaining to the contract. All notices and correspondence regarding the contract will be directed solely to this authorized member.

xiii) Furthermore, it's important to note that no member of the Joint Venture has the unilateral right to assign or transfer their interest, rights, or liabilities within the contract without obtaining written consent from the remaining member(s) and the procuring entity, specifically for the respective tender or contract. These provisions help ensure clarity, accountability, and compliance within the Joint Venture framework.

xiv) The procuring entity should seek the following documents from the JV along with the tender in addition to the qualification requirements as stated in the tender document:

a. In case one or more of the members of the JV is/are partnership firm(s), following documents shall be submitted:

i) AnotarizedcopyofthePartnershipDeed or a copy of the Partnership deed registered with the Registrar,

ii) Acopyofconsentofallthepartnersorindividualauthorizedbypartnershipfirm, to enter into the Joint Venture Agreement on a stamp paper,

iii) A notarized or registered copy of Power of Attorney in favour of the individual to sign the MOU/JV Agreement on behalf of the partnership firm and create liability against the firm.

iv) An undertaking by all partners of the partnership firm that they are not blacklisted or debarred by any Ministry / Department of the Govt. of India from participation in tenders.

b. In case one or more members is/are Proprietary Firm or HUF, the following documents shall be enclosed:

i) A copy of notarized affidavit on Stamp Paper declaring that his Concern is a proprietary Concern, and he is sole proprietor of the Concern ORhe who is signing the affidavit on behalf of HUF is in the position of 'Karta' of Hindu Undivided Family (HUF) and he has the authority, power and consent given by other members to act on behalf of HUF.

c. IncaseoneormoremembersoftheJVis/arecompanies,thefollowingdocuments shall be submitted:

i) AcopyofresolutionsoftheDirectorsoftheCompany,permittingthecompany to enter into a JV agreement,

ii) The copiesofMOA(Memorandum of Association)/ AOA(Articles of Association) of the company

iii) AcopyofCertificateof Incorporation

iv) A copy of Authorization/copy of Power of Attorney issued by the Company (backed by the resolution of Board of Directors) in favour of the individual to signthetender,signMOU/JVAgreementonbehalfofthecompanyandcreate liability against the company

d. In case one or more members of the JV is/are LLP firm/s, the following documents shall be submitted:

1. A copy of LLP Agreement
2. A copy of Certificate of Incorporation of LLP
3. A copy of resolution passed by partners of LLP firm, permitting the Firm to enter into a JV agreement
4. A copy of Authorization /copy of Power of Attorney issued by the LLP firm (backed by resolution passed by the Partners) in favour of the individual, to sign the tender and/or sign the MOU/ JV agreement on behalf of the LLP and create liability against the LLP.
5. An undertaking by all partners of the LLP that they are not blacklisted or debarred by Railways or any other Ministry / Department of the Govt. of India from participation in tenders / contracts as on the date of submission of bids, either in their individual capacity or in any firm/LLP or JV in which they were / are partners/members. Any Concealment / wrong information in regard to above shall make the contract liable for determination under Clause 62 of the Standard General Conditions of Contract.

e. In case one or more members of the JV is/are Society/s or Trust/s, the following documents shall be submitted:

1. A copy of Certificate of Registration
2. A copy of Memorandum of Association of Society/Trust Deed
3. A copy of Rules & Regulations of the Society
4. A copy of Power of Attorney, in favour of the individual to sign the tender documents and create liability against the Society/Trust.

A3. NHPC, 2025[4]

Joint Venture Bidders:

Joint Venture bidders shall comply with the following minimum qualifying requirements:

(i) The number of partners in the Joint Venture not to exceed three (3) with one of the Partners designated as Lead Partner.

(ii) The Lead Partner to fully meet the following:

a) General Experience Criteria as mentioned at 4.1.1

b) Specific Construction experience Criteria mentioned at 4.1.2.1

c) In case the Lead Partner itself meets the specific experience criteria under 4.1.2.2 or 4.1.2.3, the number of JV partners, including the Lead Partner, shall be restricted to 2(Two).

d) Average annual turnover (4.2(i)) not less than 50% of criteria specified under Financial Capacity.

e) Working Capital Criteria (4.2(iii))

(iii) The other partner(s) to individually meet the following requirements:

a) In Case the Lead Partner itself meets the Specific Experience Criteria under 4.1.2.2 or 4.1.2.3, the number of JV partners, including the Lead Partner, shall be restricted to 2(Two) and the other partner has to meet the Specific Experience Criteria not met by the Lead Partner under 4.1.2.2 or 4.1.2.3.

b) In case the Lead partner itself does not propose to meet either of the Specific Construction Experience Criteria under 4.1.2.2 or 4.1.2.3, the number of JV partners, including the Lead Partner, shall be 3 (three) and the other partner(s) has to meet the Specific Experience Criteria under 4.1.2.2 and/or 4.1.2.3.

c) Average annual turnover (4.2(i)) not less than 20% of criteria specified under financial capacity.

(iv) All the partners of the Joint Venture to individually fulfill the Net Worth and Insolvency criteria specified under Financial Capacity.

(v) The Joint Venture to collectively satisfy, as a whole, the specified financial as well as technical requirements.

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[4] Tender Document (Domestic Competitive Bidding) – Volume – 0, Section – 0, NIT, Instructions to Bidders (ITB), Bidding Data & Qualification Forms, Tender Specification No. NH/CCW/CC-III/CO-389/PR10625/25, May 2025, Tender ID: 2025_NHPC_859472_1, NHPC (A Government of India Enterprise)

(vi) The Bid Capacity requirement shall be satisfied by individual partner of Joint Venture in proportion to their participation share of work in Joint Venture.

(vii) The parties shall be required to form the Joint Venture before applying for the tender which shall be evinced by submitting a copy of the Joint Venture agreement already entered into for the purpose. The Joint Venture agreement should contain the roles and responsibilities of each constituent, the proposed participation share of each partner along with the items of work to be executed by each partner. It shall also be brought out in the Joint Venture agreement that in case the Contract is awarded to the Joint Venture, each partner of the Joint Venture shall be responsible for execution of that item of work for which he claims to have specific technical experience.

(viii) Lead partner of the Joint Venture should have at least 50% share.

A4. Southern Railway[5]

1. Guidelines for participation of joint venture firms in works tender

A. Separate identity/name shall be given to the Joint Venture firm.
B. Number of members in a JV firm shall not be more than three.
C. A member of JV firm shall not be permitted to participate either in individual capacity or as a member of another JV firm in the same tender.
D. The tender form shall be purchased and submitted only in the name of JV firm and not in the name of any constituent member.
E. The joint venture firm shall be required to submit Earnest Money Deposit (EMD) along with the tender in terms of the provisions contained in Para 5 (Earnest Money) of Part-I of GCC. EMD has to be submitted as laid down elsewhere in this document.
F. One of the members of the JV firm shall be its Lead Member who shall have a majority (at least 51% share of interest in the JV firm. The other members shall have a share of not less than 20%. In case of JV firm with foreign member (s), the lead member has to be an Indian firm with a minimum share of 51%.
A copy of Memorandum of Understanding (MOU) executed by the JV members shall be submitted by the JV firm along with the tender. The complete details of the members of the JV firm, their share and responsibility in the JV firm etc. particularly with reference to financial, technical and other obligations shall be furnished in the MOU. Railway's approved format for MOU for JV is placed at **Annexure JV-1, JV-2 & JV-3**

[5] Southern Railway

G. Once the tender is submitted, the MOU shall not be modified/altered/terminated during the validity of the tender. In case the tenderer fails to observe/comply with this stipulation, the full Earnest Money Deposit(EMD) shall be liable to be forfeited.

H. Approval for change of constitution of JV firm shall be at the sole discretion of the Railway Administration. The constitution of the JV firm shall not be allowed to be modified after submission of the tender bid by the JV firm except when modification becomes inevitable due to succession laws and in any case the minimum eligibility criteria should not get vitiated. However, the Lead Member shall continue to be the Lead Member of the JV firm. Failure to observe this requirement would render the offer invalid.

I. Similarly, after the contract is awarded, the constitution of JV firm shall not be allowed to be altered during the currency of contract except when modification become inevitable due to succession laws etc. and in any case the minimum eligibility criteria should not get vitiated. Failure to observe the stipulation shall be deemed to be breach of contract with all consequential penal action as per contract condition.

J. On award of contract to a JV firm, a single Performance Guarantee shall be required to be submitted by the JV firm as per tender conditions. All the Guarantees like Performance Guarantee, Bank Guarantee for Mobilization Advance, Machinery Advance etc., shall be accepted only in the name of the JV firm and no splitting of guarantees amongst the members of the JV firm shall be permitted.

K. On issue of LOA (Letter of acceptance) an agreement among the members of the JV firm (to whom the work has been awarded) shall be executed and got registered before the Registrar of the Companies under Companies Act or before the Registrar/Sub-Registrar under the Registration Act, 1908. This JV agreement shall be submitted by the JV firm to the Railways before signing the contract agreement for the work. In case the tenderer fails to observe/comply with this stipulation, the full Earnest Money Deposit(EMD) shall be forfeited and other penal actions due shall be taken against partners of the JV and the JV. This joint Venture Agreement shall have, inter-alia following clauses:

  i. **Joint and Several Liability**: Members of the JV firm to which the contract is awarded, shall be jointly and severally liable to the Railway Administration for execution of the project in accordance with General and Special conditions of the Contract. The JV members shall also be liable jointly and severally for the loss, damages caused to the Railways during the course of execution of the contract or due to non-execution of the contract or part thereof.

  ii. **Duration of the joint Venture Agreement**: It shall be valid during the entire currency of the contract including the period of extension if any and the maintenance period after the work is completed.

  iii. **Governing Laws**: The Joint Venture Agreement shall in all respect be governed by and interpreted in accordance with Indian Laws.

L. **Authorised Member**: Joint venture members shall authorize one of the members on behalf of the Joint Venture Firm to deal with the tender, sign the agreement or enter into contract in respect of the said tender, to receive payment, to witness joint measurement of work done, to sign measurement books and similar such action in respect of the said tender/contract. All notices/correspondences with respect to the contract would be sent only to this authorised member of the JV Firm.

M. No member of the Joint Venture Firm shall have the right to assign or transfer the interest right or liability in the contract without the written consent of the other members and that of the Railways in respect of the said tender/contract.

N. Documents to be enclosed by the JV firm along with the tender.

i. In case one or more of the members of the JV Firm is/are partnership firm(s), following documents shall be submitted:

a. Notary certified copy of the Partnership Deed

b. Consent of all the partners to enter into the Joint Venture Agreement on a stamp paper of appropriate value (in original)

c. Power of Attorney (duly registered as per prevailing law) in favour of one of the partners of partnership firm to sign the JV Agreement on behalf of the partnership firm and create liability against the firm.

ii. In case of one or more members is/are Proprietary Firm or HUF, the following documents shall be enclosed:

Affidavit on Stamp Paper of appropriate value declaring that his/her Concern is a Proprietary Concern and he/she is sole proprietor of the Concern OR he/she is in position of 'KARTA' or Hindu Undivided Family (HUF) and he/she has the authority, power and consent given by other partners to act on behalf of HUF.

iii. In case one or more members is/are limited companies, the following documents shall be submitted:

a. Notary certified copy of resolutions of the Directors of the Company, permitting the company to enter into a JV agreement, authorising MD or one of the Directors or Managers of the Company to sign MOU. JV Agreement, such other documents required to be signed on behalf of the Company and enter into liability against the company and/or do any other and on behalf of the company.

b. Copy of Memorandum and Articles of Association of the Company authorising the person to do/act mentioned in the para(a) above.

c. Power of Attorney (duly registered as per prevailing Law) by the Company authorising the person to do/act mentioned in the Para (a) above.

iv. All the members of the JV shall certify that they have not been black listed or debarred by Railways or any other Ministry/Department/PSU of the Govt. of India/State Government from participation in tenders/contract on the date of opening of bids either in their individual capacity as members of the JV or the JV firm in which they were/are members.

A5. Eastern Coalfields, 2023[6]

2. Joint Venture (JV): Two or three Companies/Contractors may jointly undertake contract/contracts. Each entity will be jointly and severally responsible for completing the task as per the contract. **(Proforma of JV Agreement is attached in Buyer Added ATC as Annexure-V)**

Joint Venture details:
Name of all members of a JV (not more than 3):

1. Lead Member (minimum participation share – 50%)
2. Member (minimum participation share – 20%)
3. Member (minimum participation share – 20%)

Joint Venture must comply the following requirements:

i. The qualifying criteria parameter e.g. experience, financial resources (of the relevant period) and the equipment/fleet strength of the individual member of the JV/Consortium will be added together and the total criteria should not be less than as spelt out in qualifying/eligibility criteria as specified in e-tender Notice / Bid document. However, the required Working Capital shall be met by individual members of JV/Consortium as spelt out in the relevant Clause

ii. The formation of JV or change in the JV character/ members after submission of the bid and any change in the bidding regarding JV will not be permitted.

iii. The bid, and in case of a successful bid - the Agreement, shall be signed so as to legally bind all members jointly and severally and any bid shall be submitted with a copy of the JV Agreement providing the joint and several liabilities with respect to the contract.

iv. The pre-qualification of a JV does not necessarily pre-qualify any of its member individually or as a member in any other JV. In case of dissolution of a JV, each one of the constituent firms may pre-qualify if they meet all the pre-qualification requirements, subject to written approval of the employer.

v. The bid submission must include documentary evidence to the relationship between JV members in the form of JV Agreement to legally bind all members jointly and severally for the proposed Agreement which should set out the principles for the constitution, operation, responsibilities regarding work and financial arrangements, participation (percentage share in the total) and liabilities (joint and several) in respect of each and all of the firms in the JV. Such JV Agreement must evidence the commitment of the parties to bid for the facilities applied for (if pre-qualified) and to execute the contract for the facilities if their bid is successful.

vi. One of the members shall be nominated as 'In-charge' of the contract and shall be designated as Lead Partner. This authorization shall be evidenced by submitting with the bid a Power of Attorney signed by legally authorized signatories of all the members.

[6] Tender Document (For Publication on GeM Portal-Buyer added ATC), NIT No.:EC / HQ / CMC / NIT / Miscellaneous / 2023 / 206 dated 21st April 2023, Eastern Coalfields Limited, West Bengal

All the partners of a JV/Consortium may together authorize the Lead Partner to submit the bid on behalf of the JV/Consortium, along with an undertaking that in case of a successful bid, the work shall be executed by the JV/Consortium as per contract terms of the bid document.

Note: This authorization must be a part of the JV/consortium agreement if the Bid is submitted by the lead partner on behalf of the JV/Consortium. The JV must provide that the Lead Member shall be authorized to incur liabilities and receive instructions for and on behalf of any and all members of the JV and the entire execution of the contract shall be done with active participation of the Lead Member.

vii. The contract agreement should be signed by each JV members. Subsequent declarations/letters/documents shall be signed by Lead Member authorized to sign on behalf of the JV or authorized signatory on behalf of JV.

viii. An entity can be a member of only one JV/Consortium. Bid submitted by JVs/ Consortium/Lead Partner, consisting of the common entities as member will be rejected.

ix. The JV Agreement may specify the share of each individual member for the purpose of execution of this contract. This is required only for the sole purpose of apportioning the value of the contract to that extent to individual member for subsequent submission in other bids if he intends to do so for the purpose of the qualification in that Bid.

x. The JV agreement must specifically state that it is valid for the project for which bidding is done. If JV breaks up midway before award of work and during bid validity period, bid will be rejected.
If JV breaks up midway before award of work and during bid validity/after award of work/during pendency of contract, in addition to normal penalties as per provision of bid document, all the members of the JV shall be debarred from participating in future bids for a minimum period of 12 months.

xi. JV Agreement shall be registered in accordance with law so as to be legally valid and binding on the members before making any payment.
Note: If the work is awarded to a JV firm, they will register the JV Agreement under Registration Act in accordance with law.

xii. JV/Consortium shall open a bank account in the name of JV/Consortium and all payments due to the JV/Consortium shall be credited by employer to that account only. To facilitate statutory deductions all statutory documents like PAN, GST registration etc. shall be submitted by JV/Consortium, at the time of execution of Agreement.

xiii. The JV/Consortium must enroll in the e-Procurement portal with the name of the firm as appearing in the JV/Consortium agreement, whereas they may enroll in the name of the Lead Partner in case of Bid submission through GeM. However, the JV/Consortium has to submit all requisite Legal Documents (PAN, GST etc) in the name of JV/Consortium before execution of the Agreement.

xiv. If a Bidder participates as Joint Venture (JV), the benefits as per Public Procurement Policy for MSEs Order-2012 shall not be applicable for them.

PROFORMA OF JOINT VENTURE AGREEMENT
(On Non-Judicial Stamp paper of appropriate value as per provision of the Stamp Act applicable in the concerned state)

This Joint Venture /Consortium agreement is made on this ……………………..day of…………………………………..

AMONGST/BETWEEN

M/s………………………………………, having its registered Office at …………………………..
Represented by Shri…………………………….(Name and Designation) of M/s…………………..........Who has power of Attorney to enter into Joint Venture with……………………………………..and Sign all documents/agreements on behalf of M/s……………… (hereinafter referred to as"……………….")

AND

M/s………………………………………, having its registered Office at …………………………..
Represented by Shri…………………………….(Name and Designation) of M/s…………………..........Who has power of Attorney to enter into Joint Venture with……………………………………..and Sign all documents/agreements on behalf of M/s……………… (hereinafter referred to as"……………….")

AND

M/s………………………………………, having its registered Office at …………………………..
Represented by Shri…………………………….(Name and Designation) of M/s…………………..........Who has power of Attorney to enter into Joint Venture with……………………………………..and Sign all documents/agreements on behalf of M/s……………… (hereinafter referred to as"……………….")

The expressions M/s………………………….. and M/s……………………………… and M/s………………………… shall, wherever the context admits, mean and include their respective legal representatives, successors-in-interest and assigns and shall collectively be referred to as "Joint Venture /Parties" and individually as "Joint Venture Partner/Party".

WHEREAS M/s…………………………. and M/s……………………….and M/s……………………………….agreed to form a Joint Venture in order to join their forces to obtain best results from the combinations of their individual resources of technical and management skill, finance and equipment for the benefit of the project and in order to submit the Bid for the work of "………
…"(Hereinafter referredto as "Project") under……………………………………………………………….(Name of Company) (hereinafter referred to as "the Principal Employer").

The Parties hereby enter into this Joint Venture Agreement (hereinafter referred to as "Joint Venture agreement") to jointly prepare and submit the Bid for the Project and in the event of securing the Project from the Employer, to execute the Project in accordance with the Contract Terms and Conditions, to the satisfaction of the Principal Employer.

NOW THEREFORE, the parties, in consideration of the mutual premises contained herein, agree as follows:

2) FORMATION AND TERMINATION OF THE JOINT VENTURE.
The parties under this Agreement have decided to form a Joint Venture to submit the Bid for the above Project and execute the Contract with the Principal Employer for the Project, if qualified and awarded.

a) The name and style of the Joint Venture shall be "……………………………………………………….."(hereinafter called the "Joint Venture")

b) The Head Office of the Joint Venture shall be located at………………………………………………….. and the site office will be located at the site of the Project. All communication regarding the Project will be made to…………………………………… Telephone Nos

c) Neither of the parties of the Joint Venture shall be allowed to assign, pledge, sell or otherwise dispose all or part of its respective interests in the Joint Venture to any party including the existing partner of the Joint Venture.

d) The terms of the Joint Venture shall begin as on the date first set forth above and shall terminate on the earliest of the following dates.
   i) The Joint Venture fails to obtain qualification from the Employer.
   ii) The Contract for the Project is not awarded to the Joint Venture.
   iii) The Employer cancels the Project.
   iv) Either Party commits material breach of this Agreement and fails to cure such breach within the period designated by the non-defaulting Party.
   v) Both parties agree to terminate this Agreement in writing.
   vi) The Project is completed including defects liability period to the satisfaction of the Employer and all the parties complete any and all duties, liabilities and responsibilities under or in connection with the Contract and the Joint Venture agreement.

3) LEAD PARTNER.

M/s…………………………………………………..shall be the Lead Partner of the Joint Venture and is In-charge for performing the contract management. M/s………………………………………………………… shall be attorney of the parties duly authorized to incur liabilities and receive instructions for and on behalf of any and all partners in the Joint Venture and also all the partners of the Joint Venture shall be jointly and severally liable during the bidding process and for the execution of the contract as per contract terms with the employer in accordance with the power of attorney annexed. All Joint Venture Partners M/s……………………………………… , M/s…………………………………… & M/s………………………………… nominate and authorize Shri……………………………………………….. (name and designation) of M/s………………………………………… to sign all letters, correspondence,papers & certificates and to submit the Pre-qualification Application / Bid documents for and on behalf of the Joint Venture.

4) REPRESENTATIVE OF THE PARTNERS OF THE JOINT VENTURE.

Each constituent party of the Joint Venture appoints the following personnel as the representative of the relevant party with full power of attorney from the Board of Directors of the concerned Company, or from the partners of the entity, or from the proprietor.

JV Partner	Name	Position in the respective Company
M/s………………………	……………………..	……………………………………………
M/s………………………	……………………..	……………………………………………
M/s ………………………	……………………..	……………………………………………

5) PARTICIPATION SHARE & WORK RESPONSIBILITIES.

4.1. The parties agree that their respective participation share (hereinafter called 'Participation Share') in the Joint Venture shall be as follows:

M/s:……………………………………………………………………………………%(……………… per cent)

M/s: :……………………………………………………………………………………%(……………per cent) and

M/s:……………………………………………………………………………………%(………………per cent)

4.2. The Parties shall share the rights and obligations, risk, cost and expenses, working capitals, profits or losses or others arising out of or in relation to execution of the Project individually or collectively.

4.3. The parties shall jointly execute the works under the Project as an integrated entity and allocate responsibilities as regards division of work between themselves by organizing the adequate resources for successful completion of the Project. However, all parties shall remain jointly and severally responsible for the satisfactory execution of the Project in accordance with the Contract terms and conditions.

6) **JOINT AND SEVERAL LIABILITIES.**
All partner of Joint Venture shall be liable jointly and severally during the Pre-qualification and Bidding process; and in the event the contract is awarded, during the execution of the Contract, in accordance with Contract terms.

7) **WORKING CAPITAL**
During the execution of work/service, the requirement of Working Capital shall be met individually or collectively by the JV partners.

7. **BID SECURITY:**
Bid Security, Performance Security and other securities shall be paid by the Joint Venture except as otherwise agreed.

8) **PERSONNEL & EQUIPMENT**
Team of Managers / Engineers of all the partners of the Joint Venture will form part of the core management structure and assist in execution of the project. The list of personnel and equipment proposed to be engaged for the Project by each Party will be decided by the management committee.

9) **NON-PERFORMANCE OF RESPONSIBILITY BY ANY PARTY OF JOINT VENTURE.**

a) As between themselves, each Party shall be fully responsible for the fulfillment of all obligations arising out of its scope of the work for the Project to be clarified subject to the Agreement between the Parties and shall hold harmless and indemnified against any damage arising from its default or non-fulfilment of such obligations.

b) If any Party fails to perform its obligations described in this Agreement during the execution of the Project and to cure such breach within the period designated by the non-defaulting party, then the other party shall have the right to take up work, the interest and responsibilities of the defaulting party at the cost of the defaulting party.

c) Stepping into the shoes of the existing partner of Joint Venture with all the liabilities of the existing partner from the beginning of the contract with the prior approval of Company.

d) Notwithstanding demarcation or allotment of work of between/amongst Joint Venture partners, Joint Venture shall be liable for non-performance of the whole contract irrespective of their demarcation or share of work.
e) In case bid being accepted by Company, the payments under the contract shall only be made to the Joint Venture and not to the individual partners.

10) **BANK A/C.**
Separate Bank A/c. shall be opened in the name of the Joint Venture in a scheduled or Nationalized Bank in India as per mutual Agreement and all payments due to the Joint Venture shall be received only in that account, which shall be operated jointly by the representative of the Parties hereto. The financial obligations of the Joint Venture shall be discharged through the said Joint Venture Bank Account only and also all the payments received or paid by Company to the Joint Venture shall be through that account alone.

11) **LIMIT OF JOINT VENTURE ACTIVITIES.**
The Joint Venture activities are limited to the bidding and in case of award, to the performance of the Contract for the Project according to the conditions of the Contract with the Employer.

12) **TAXES.**
Each Party shall be responsible for its own taxes, duties and other levies to be imposed on each party in connection with the Project. The taxes, duties and other levies imposed on the Joint Venture in connection with the Project shall be paid from the account of the Joint Venture.

13. **EXCLUSIVITY**
The Parties hereto agree and undertake that they shall not directly or indirectly either individually or with other party or parties take part in the Bid for the said Project. Each party further guarantees to the other party hereto that this undertaking shall also apply to its subsidiaries and companies under its direct or indirect control.

14) MISCELLANEOUS:

a. Neither party of the Joint Venture shall assign, pledge, sell or otherwise dispose all or part of its respective interests in the Joint Venture to all third party without the Agreement of the other party in writing.

b. Subject to the above Clause, the terms and conditions of this agreement shall be binding upon the parties, the Directors, Officers, Employees, Successors, Assigns and Representatives.

15) APPLICABLE LAW

This agreement shall be interpreted under laws and regulations of India.

IN WITNESS Whereof the parties hereto have hereunder set their respective hands and seals the day, month, year first above written.

For ………………………………………..	For………………………………..
Signature ____________________ (Name & Address) (Official Seal)	Signature ______________ (Name & Address) (Official Seal)
Place ……………………………………..	Place ………………………………..
Date ………………………………………	Date …………………………………
Witness Signature …………………………….. (Name & Address)	Witness Signature ………………………… (Name & Address)

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