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Wataru KADOBAYASHI, Yohei TEZUKA, Minoru AOSHIMA and

Amit KUMAR

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I Positioning of Joint Ventures as Part of an Entry Strategy into India
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Japanese companies intending to do business in India have several options for entering the market including (1) independent entry (sole proprietorship), (2) merger and acquisition (M&A) and (3) establishment of a joint venture. For Japanese companies with little experience in the Indian market, establishing a joint venture with an Indian company is often a very sensible strategy.

When evaluating and selecting Indian companies as candidate joint venture partners, it is important to evaluate them from the aspects of both business/corporate functions and corporate culture. This should be done by considering the basic advantages and disadvantages that will be brought about by a relationship in the value chain between the Japanese company and the Indian partner company as well as the business environment unique to India.

Given that the partner company is likely to have expectations that are different from those of the Japanese company in taking part in the joint venture and that a joint venture is not always a permanent arrangement, it is necessary to determine the details of various matters as far as possible prior to the establishment of any joint venture so that the commitment (degree of involvement) that is optimum to each party can be obtained and the Japanese company can proceed in an advantageous way even in complicated situations that might occur in the future. The issues that are particularly important in doing so include: (1) which party holds the right of management, (2) defining business areas, (3) reaching agreement on various functions related to business and corporate management and (4) decision-making methods in the event of any disagreement between parties.

To prevent the occurrence of situations in which making decisions for day-to-day operations and other various matters is left up to the partner company, resulting in an unmanageable status, careful consideration must be given to the management of the joint venture.

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I Positioning of Joint Ventures as Part of an Entry Strategy into India

1 Difficulties inherent in joint ventures

No one doubts that India is an attractive market. Even so, it is also true that not every foreign company has been successful in the Indian market. The challenges presented by India are unique. For example, the markets are dispersed over a vast area; language and culture differ depending on location; there is a high degree of diversity among consumers (income and education levels, religion, etc.); the market has high price sensitivity; the establishment of procurement, sales and delivery networks is difficult; there is a risk of labor disputes; the infrastructure is underdeveloped; and tax and administrative procedures are complex. These unique challenges all work together to present a major barrier to those companies having little experience in India as they try to rapidly deploy their businesses there.

Faced with such a situation, setting up a joint venture (JV) with an Indian company that has already established a business base to some degree in India is one of the effective strategic options available to Japanese companies.

However, joint ventures do not have to be permanent arrangements. In the past, many large-scale foreign companies established joint ventures with Indian companies, and subsequently dissolved such collaborations (Table 1).

Among these cases, while some joint ventures were dissolved so that foreign companies could grow further, there have been other cases where joint ventures failed for negative reasons such as a mismatch of strategy between the foreign companies and their joint venture partners. Setting up joint ventures between foreign companies and Indian companies means that companies having largely different origins and intentions work together to undertake the same business, which is not an easy task.

In addition to the formation of joint ventures as a means of entering the Indian market, there are many other options such as the establishment of a wholly foreign-owned enterprise (sole proprietorship) and mergers/acquisition (M&A). However, this paper focuses on joint ventures that have a high degree of difficulty in terms of determining strategy and negotiating with a potential partner company.

2 Study processes for entry into the Indian market through a joint venture

Before the start of negotiation with an Indian company that could become a joint venture partner, it is necessary to go through multiple study processes that begin with the formulation of a business strategy. Figure 1 shows the typical study processes that are followed when using a joint venture to enter the Indian market.

As is shown in the figure, in order to enter the Indian market, a company should first firmly establish a business strategy and carefully examine all possible options, including a joint venture. If a decision is made to adopt a joint venture approach, the company should select a joint venture partner through in-depth evaluations of multiple candidates. However, according to the interviews conducted by Nomura Research Institute (NRI) with Japanese and other foreign companies that had already made the move into India, some stated that "there was no medium- or long-term strategy" and "a specific partner company was already assumed before making other strategic decisions." In fact, cases have been found here and there in which, through the introduction of a potential partner company by an investment bank, a trading firm or a consulting company or through a contact made by an Indian company to a Japanese company to set up a joint venture, a strategy for entering the Indian market is considered based on the assumption of establishing a joint venture with the indicated Indian company.

There have been other cases where issues that were likely to raise problems when negotiating a joint venture were not adequately addressed and where disagreements arose after the establishment of the joint venture, which led to business being unable to proceed smoothly. There

Table 1. Cases of joint venture dissolution

Industry	Foreign company	Indian company	Year of establishment	Year of dissolution
Information technology (IT)	IBM HP (Hewlett-Packard)	Tata HCL	1992 1991	1999 1997
Daily necessities	P&G (Proctor & Gamble) SCA	Godrej Godrej	1993 2007	1996 2008
Communications	Virgin Mobile Vodafone	Tata Essar	2008 2007	2012 2011
Automobiles (four-wheeled vehicles and two-wheeled vehicles)	Fiat Honda	Tata Hero	2006 1984	2012 2010

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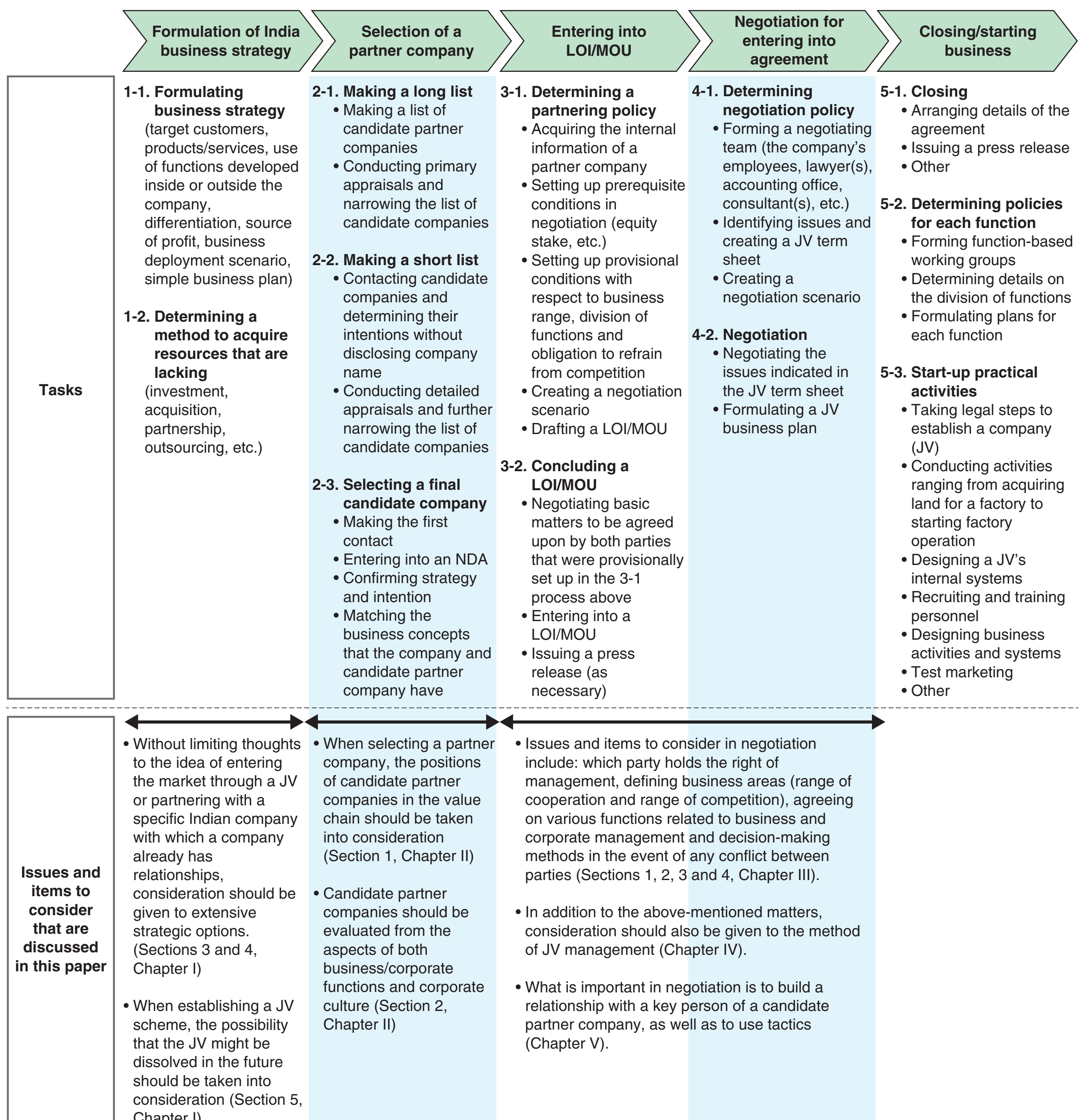
have even been instances of joint ventures being dissolved as explained above.

Compared to other entry options such as sole proprietorship and acquisition, a more strategic approach should be adopted for a joint venture in proceeding with negotiation. In this paper, as shown in the lower part of Figure 1, consideration is given to major issues and items to consider at each stage of study processes when pursuing a joint venture as a means of entering the Indian market. It should be noted that in reality, other issues in addition to those discussed in this paper might occur, depending on the situation. This paper attempts to address only the principal issues and items to consider that are assumed in general cases. Therefore, in addition to these general issues, any actual negotiation should also adequately address issues particular to each project by forming a team of experts assembled from both inside and outside a company.

3 Cases in which a joint venture is preferable

Cases of entering the Indian market in which local bases are established can, as described in Section 1, be broadly

Figure 1. Study processes for entry into the Indian market through a joint venture



Notes: JV term sheet is a document outlining the issues and conclusions of JV negotiation. LOI = Letter of Intent, MOU = Memorandum of Understanding, NDA = Non-disclosure Agreement.

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divided into three types, namely, (1) entering the market independently (sole proprietorship), (2) acquiring a local company (M&A) and (3) establishing a joint venture with a local Indian company. Table 2 lists those cases where a joint venture would be a preferable approach, as well as those where a joint venture would not be suitable.

Particularly important to note is the relationship between the global strategy and the strategy for India. When establishing a joint venture with an Indian company, depending on the terms and conditions agreed upon between both parties such as those related to company's equity stake, the intentions of the Indian partner company will have a huge impact on decision making. Suppose that the strategy of a Japanese company is to produce only globally standardized, high-quality products in India for sale both in India and in other markets. In this case, if the Indian partner company considers only business in its own domestic market as the target for alliance, a disparity arises between the intentions and strategies of both parties, making decision making difficult. In other words, this situation involves a relationship between the Japanese company that aims for overall optimization and the Indian company that pursues optimization only within the Indian market. In such a situation, it is difficult to attain a fundamentally acceptable solution. In such a case, rather than pursuing a joint venture, a sole proprietorship or an acquisition, whereby the company has full control over its entry into the Indian market, might be preferable.

4 Basic characteristics of a joint venture

If a company plans to enter the Indian market by establishing a joint venture, it must first understand the basic characteristics of a joint venture business. As shown in Figure 2, unlike a sole proprietorship, in a joint venture, multiple companies having different goals work together to operate a single business. Therefore, its operation is governed by the unique characteristics of a joint venture.

Specifically, despite having different expectations, the Japanese and Indian companies that establish a joint venture participate in the management of a joint venture through investment, provide each other with management resources and share any profits that may be generated or losses that may be incurred. For this reason, a joint venture business is governed from a perspective different from that of an independent business. Examples include the way in which a company's intention is reflected in management, the provision of management resources and the sharing of responsibility and authority for accomplishments and losses.

There are also some cases in which a joint venture is established only for a specific portion of overall business such as a joint venture for handling only manufacturing. However, overall joint venture business takes shape only

Table 2. Cases in which a joint venture is preferable and cases in which a joint venture is not suitable

Cases in which a joint venture is preferable	Cases in which a joint venture is not suitable
■ The market for business in which a company is engaged is in a take-off stage in India, and major business opportunities can be expected.	If the market for business in which a company is engaged is still at the beginning phase in India, the speed at which business should be deployed is not a major matter. Options available in such a case include licensing, use of import agents and business deployment by establishing an office of representative employees assigned to India.
■ Indian companies that can be considered as partner candidates exist.	If Indian companies that can be considered as partner candidates do not exist, consideration should be given to a means of sole proprietorship for entry.
■ A company has strengths that local Indian companies do not have in terms of manufacturing technology and/or business expertise.	If a company does not have strengths that give it advantages in negotiation, there is little incentive for a candidate company to select the company as its partner. Consideration should be given to other options.
■ The market is rapidly growing and competitors are entering the market one after another. As such, business should be deployed as quickly as possible.	If quick business deployment is not necessary, choices include entering the market independently over a long term and waiting for the appearance of a candidate company to be acquired.
■ A company considers the establishment of manufacturing factories in India.	If strategy does not include the establishment of manufacturing factories, the barrier to entering the market independently (sole proprietorship) will be lowered.
■ The envisioned strategy cannot be achieved with only a company's own resources (personnel, sales channels, etc.)	If a company's own resources are sufficient for entering the market, sole proprietorship should be taken into consideration.
■ A company wants to share investment cost, management of specific functions and business risk with a partner.	If a company can manage all such matters independently, a means of sole proprietorship or acquisition is preferable.
■ The possibility of deploying a company's technology/expertise in India at an early stage, which a company does not want to disclose to other companies, is low.	A company must transfer its technology/expertise to a greater or lesser degree to a partner company. If a company wants to strongly avoid such transfer, a means of sole proprietorship or acquisition is preferable.
■ A company adopts different business functions for each country/region. Therefore, a company can consider a strategy for product development, procurement and production that is tailored to India, which is to some degree independent of a strategy designed for other countries/regions.	If a strategy for India must be strictly consistent with a global strategy that is formulated by a company's head office, the involvement of other companies might hinder the process of decision making. Therefore, in this case, a means of sole proprietorship or acquisition is preferable.

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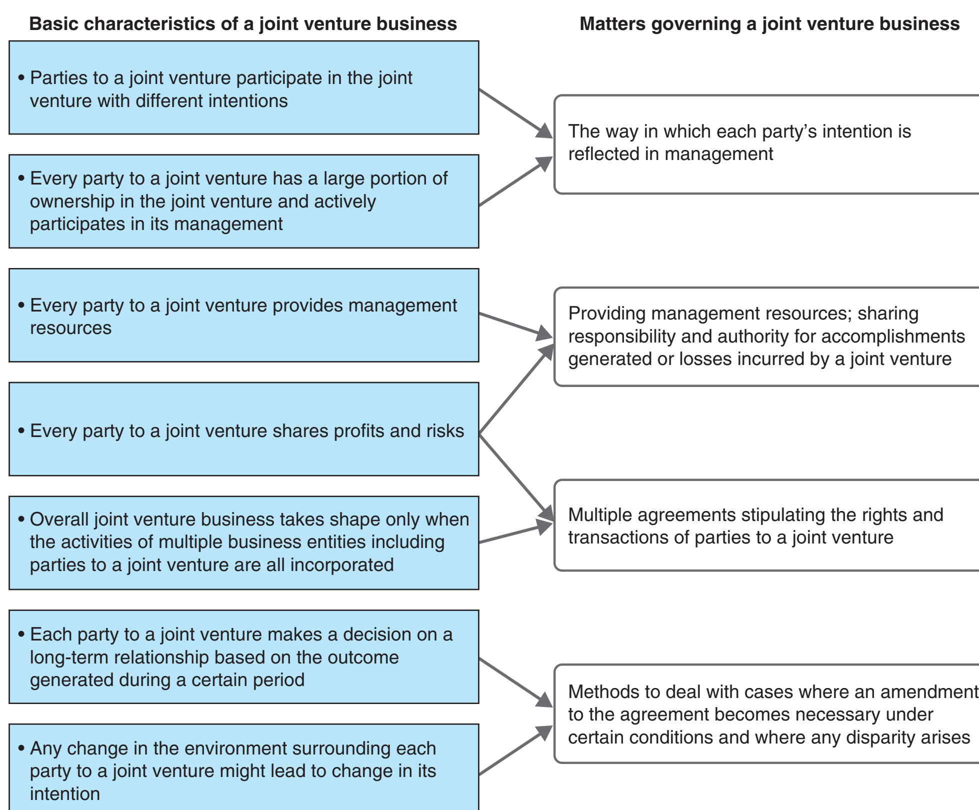
Figure 2. Basic characteristics of a joint venture business



when the activities of both the Japanese and Indian companies are all incorporated into a single entity. To ensure that overall business is performed smoothly, agreements must be reached at an early stage on the division of the roles of each business entity, mutual rights and responsibilities and the transaction structure.

Another characteristic of a joint venture is the possibility that the positioning of each participating company might change depending on change in the environments where the Japanese and Indian companies find themselves. Because it would be difficult to reach consensus when any change in a joint venture becomes necessary, the terms and conditions must be explicitly provided at the time of establishing the joint venture to deal with cases where any amendment becomes necessary to the agreement and/or any disparity arises.

As such, relative to setting up a sole proprietorship or buying out an existing company to have full control over that company, the establishment of a joint venture presents a very different means of entering the Indian market in that coordination with the Indian partner company becomes necessary in many matters. In facing an environment where both parties pursue success of a joint venture but where conflicts of interest could occur, it becomes necessary for a company to make, so to speak, "self-interest" studies so as to maximize the company's profits and minimize the company's risks. The difficulty of a joint venture lies in the fact that it is necessary to resolve the issues mentioned above as far as possible before the joint venture is actually established.

5 Considering the possibility of dissolving a joint venture in the future

As mentioned in Section 4, it is likely that any partnership with an Indian company would not be permanent. Therefore, being aware of the factors that could lead to the dissolution of a joint venture prior to entering into negotiations is very important in creating a joint venture scheme, which is described in Chapter III.

Cases in which a joint venture might be dissolved can be divided into the following three patterns.

(1) The results of mutual evaluations conducted before the establishment of a joint venture differ considerably from the actual situations
(2) The positioning of the joint venture changes
(3) A conflict of management policy occurs

These patterns are listed in Table 3.

For example, in 1993, Emerson, one of the largest electrical and electronic equipment manufacturers in the U.S., established a joint venture with Kirloskar of India to manufacture compressors and related products. This joint venture was known as Kirloskar Copeland, with 51 percent equity stake held by Kirloskar and 49 percent by Emerson. With the growth of the Indian economy after 2000, Emerson placed more emphasis on the importance of the Indian market. In light of this situation, Emerson set out to turn its Indian operation into a manufacturing base for the entire Asian market. In order to

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Table 3. Cases leading to the dissolution of a joint venture

Pattern		Examples
Differences between mutual evaluations and actual situations	Limits of partner evaluations at the time of negotiating a joint venture	The ability of a partner company is considerably lower than that assumed at the time of negotiating a joint venture. Or, being unable to obtain a strong commitment (degree of involvement) from a partner led to waning of the enthusiasm for operating a joint venture.
Change in the positioning of a joint venture business	Turning an Indian operation into a manufacturing base for the global market	In order to use an Indian base as a manufacturing base for the global market, it has become necessary to adopt a common approach towards product development and procurement and to cooperate flexibly with other manufacturing bases (a company pursues overall optimization, rather than individual optimization designed for the Indian market).
	With the growth of the Indian market, Indian business has become a company's core business	Because the importance of Indian business within a company's global business has increased, a need has arisen to increase its control over a joint venture such as by introducing the latest technology.
	With declining profit, Indian business has become a non-core business	Compared to other businesses, the importance of Indian joint venture business declined. Therefore, a company wants to reduce its commitment by selling its equity stake.
Disagreement over management policy	Change of management policy due to change of a partner's president	The president of a partner company has changed. The new president is inclined to seek accomplishments in a short time in terms of the profitability of joint venture business. Or, the new president regards the joint venture business as non-core business.
	Disagreement over strategy	A company wants to maintain existing prices by introducing new products. However, a partner company wants to sell existing products at lower prices.
	A partner company has become a competitor	A partner company has started to manufacture products at its factories that compete with a company's products.

introduce important technology needed to enhance competitiveness, the company moved to acquire the management rights over the joint venture. To that end, in 2006, Emerson acquired Kirloskar's shares in the joint venture business, which Kirloskar had regarded as being a non-core operation. In this way, the joint venture became a wholly owned subsidiary of Emerson.

In the case of a Japanese company, the key person of a candidate partner Indian company who had been promoting the possibility of a joint venture was transferred to another position. The loss of the key person led to the cooperation that was originally envisioned becoming impossible to obtain from that candidate partner company.

It is difficult for anyone to know everything, inside and out, at the time of negotiating a joint venture. Without being overwhelmed by the excitement of setting up a joint venture, what is important is to calmly discuss all the possibilities that the future could bring. Even by taking a pessimistic view, countermeasures to apply in the event of such issues should be incorporated in the design of a joint venture.

II Evaluation Criteria for Partner Selection

Depending on the business in which a Japanese company and an Indian company are engaged as well as on their respective strategy, their mutual positioning naturally differs. In this chapter, the items to evaluate when selecting a partner are discussed in consideration of the basic advantages and disadvantages that arise from the relationship between a company and its partner in the value chain.

1 Positioning a partner company in the value chain

What a company can expect of a partner company and what disparity may occur in the future are highly dependent on the value-chain-based relationship between a Japanese company and its Indian partner (Table 4).

In a relationship where a Japanese company or a joint venture is positioned upstream in the value chain and its Indian partner company is positioned downstream, there is a possibility that a conflict of interest will arise. An upstream company will attempt to sell to a downstream company at the highest price possible, while the downstream company will want to purchase from the upstream company at the lowest price possible. There will be no value chain conflict of interest when the Japanese and Indian companies forming a joint venture are engaged in the same business. However, both sides will continue to have the intention to deploy business independently in the future by taking full advantage of the other party's good points.

In this way, although the ability to use the management resources of an Indian partner company can be regarded as being an advantage of a joint venture, at the same time, there are also potential conflicts of interest and a divergence of views that might arise. The selection of candidate Indian partner companies should be made with these possibilities in mind.

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Table 4. Basic advantages and disadvantages arising from a relationship with a partner company in the value chain

Partner company			Advantages	Disadvantages
Same industry	Vertical relationship in the value chain	Partner is positioned upstream	• Possible to increase the local procurement ratio. • Easy to acquire material, parts, components, fuel, etc. that are difficult for a company to procure.	• Necessary to make own efforts to find customers. • Because a supplier will be confined to a partner company, there is a risk that procurement costs will remain high.
		Partner is positioned downstream	• Because a customer buying a large quantity of products can be secured, investment risk can be reduced.	• Difficult to look at customers other than a partner company and develop products that are designed for other than a partner company.
	Horizontal relationship in the value chain (engaged in same business)		• Because both corporate functions (personnel management, general affairs, accounting and finance) and business functions (in particular, procurement, production and sales) of a partner company can be used, resource input in the business can be minimized.	• Difficult to take the initiative if a company is too dependent on a partner company. • There is a risk that a partner company will become a competitor in the future.
Different industry	Only resources such as corporate functions, land and buildings are available		• A joint venture provides an environment in which a company can easily concentrate its efforts on business.	• There is no key factor in selecting a partner company. • Difficult to obtain commitment from a partner company.
	In addition to corporate functions, business function resources are also available		• A joint venture provides an environment in which a company can easily concentrate its efforts on business, and enables a company to reduce resource input in business. • Unlike a partner company having a horizontal relationship in the same industry, the possibility of a partner company becoming a competitor in the future is low.	• Because a partner company is in a different industry, direct synergy effects tend to become weak. • For a partner company, a joint venture might turn into a non-core business, leading to a risk of reduced commitment from a partner company.

For example, in 1993, Cummins, a global engine manufacturer, set up a 50-50 joint venture with India's largest commercial vehicle manufacturer, Tata. The new company was called Tata Cummins and primarily supplied engines to Tata. This was a case where the Indian partner in the joint venture was positioned downstream in the value chain. Because the majority of production was for captive supply to Tata, it was possible to maintain high levels of productivity, rapidly expanding market share while minimizing investment risk. Starting around 2000, the joint venture began to explore sales to commercial vehicle manufacturers other than Tata, the production of engines for power generation and industrial use and the possibility of exports. It appears that the supply of engines to Tata remains its main business even now. It is reasonable to assume that difficulties might have been faced in supplying products to Tata's competitors or in directing products towards other usage purposes, as influenced by the intention of Tata, which is the largest customer and holds half of the decision-making rights of the joint venture.

2 Items to evaluate when selecting a partner company

After determining how a joint venture would fit into its strategy and creating a plan for dividing the roles with a partner Indian company, a Japanese company must undertake a detailed assessment of potential partners.

To this end, evaluations should be made of the business functions that are necessary to undertake business such as product development, production and sales, as well as of corporate functions that are related to corporate management such as accounting, finance, personnel management and general affairs. In addition, it is also important to evaluate a potential partner's corporate culture to ascertain whether it shares similar values. Specifically, by examining the material provided by a potential partner company and by means of interviews, as well as based on evaluations by external consultants, it is possible to find out whether a potential partner company satisfies the standards required by a Japanese company.

Figure 3 shows the points that are particularly important for the evaluation of a partner company when establishing a joint venture with an Indian company. Note that, without confining the start of joint efforts to the product development/design stage, it should also be possible to cooperate with an Indian company from as early as the research and development stage. However, because it is thought that almost no such cases have appeared, such cases were omitted from the diagram.

• Product development/design

A company should consider whether, in the future, the development and design of products tailored to the Indian market should be carried out in India. Many companies would likely have this need. This is particularly true in the case of products/services aimed at general consumers, as well as products/services whose design needs to be customized for each client company. If the management resources of an Indian partner company are to be used for product development/design, it is necessary to confirm

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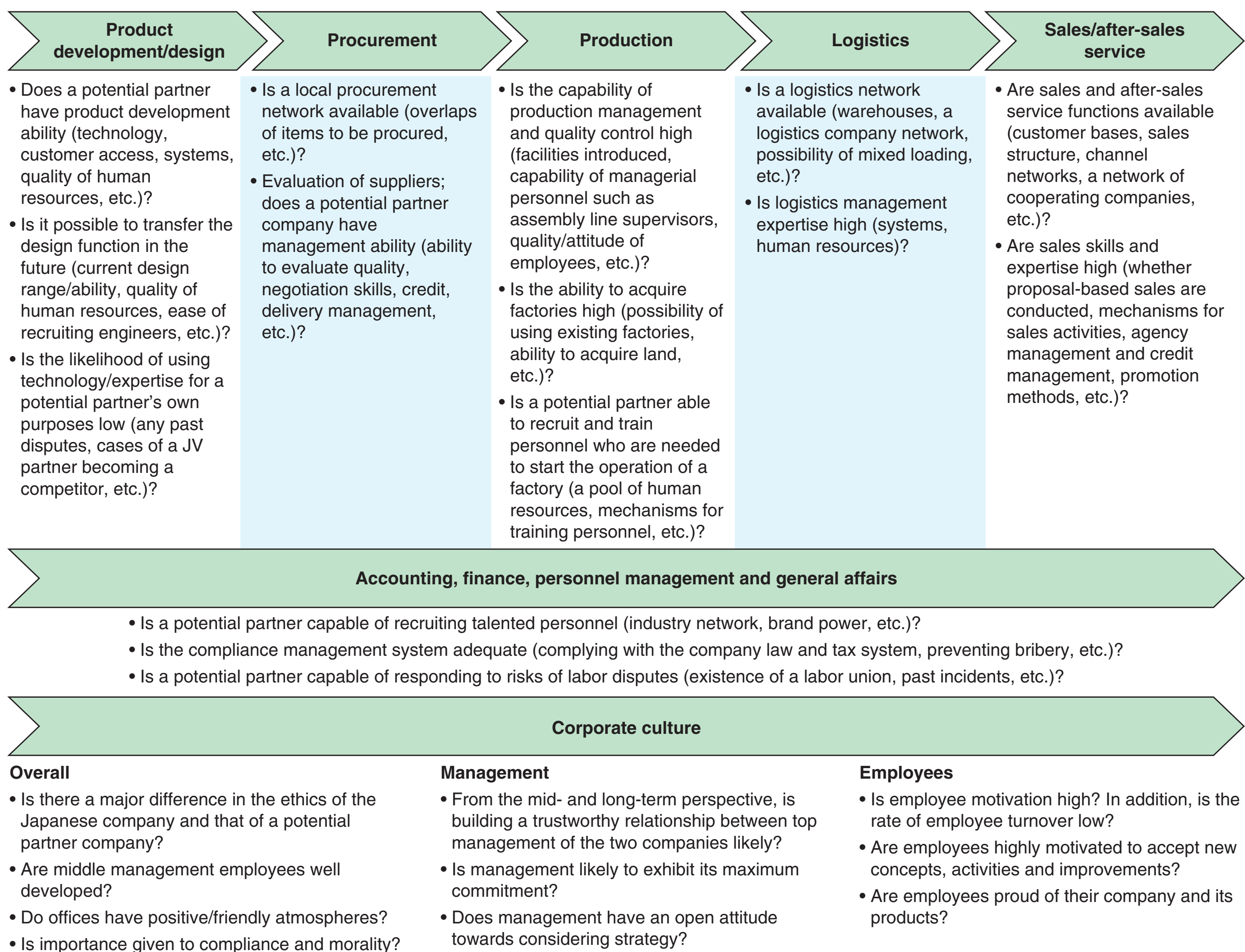

Figure 3. Major items to confirm in evaluating potential partner companies

the level of competence of that company. Because the products to be offered by a joint venture will be different from those currently being offered in India, the ability of an Indian partner company to respond to such difference will become important, especially from the aspect of human resources. Furthermore, because the technology and expertise owned by a Japanese company will be transferred to an Indian partner company through a process of joint product development/design, the company should be aware of the risks involved in such transfer.

• Procurement

By entering into a joint venture, it becomes possible to access the supplier list held by an Indian partner company, as well as information about the management ability of such suppliers (including credit). When a joint venture uses a supplier that has transactions with an Indian partner company, it will probably be necessary to re-evaluate the supplier and the parts/components that the supplier provides. Nevertheless, in comparison with the case in which a Japanese company does all these activities independently, considerable labor and time will be saved. As a result, the local factory would be able to begin operation earlier and the ratio of parts and components to be procured locally would be increased.

• Production

If management resources that are already in the possession of an Indian partner company can be used, which include land, factory buildings and equipment needed for the operation of a factory, as well as managerial personnel and assembly-line workers, it would be easy to start the operation of a factory. In addition, if a potential Indian partner company has the ability and means for acquiring the necessary land as well as for recruiting and training personnel, the time needed until the start of production can be shortened.

• Logistics

It is necessary to confirm whether a joint venture will be able to use the logistics network set up by a potential Indian partner company. In India, it is common for a company to have no warehouses, trucks or similar assets of its own, instead outsourcing the logistics function to another company. However, only a few companies have the ability to offer India-wide service. Therefore, it is normal to contact different logistics companies based on the destination. As such, a list of logistics companies, as well as the information on the results of the evaluation of each, will be a major help when selecting a logistics company.

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• Sales and after-sales service

With the exception of those cases where products are only shipped overseas or to Japanese companies, or where transactions with certain corporate customers have already been determined at the time of entering the Indian market, the most common expectation that a foreign company has of its Indian partner is access to its sales and after-sales service resources.

India is a vast country with its major cities scattered throughout, and a transportation network between them has not been developed. Therefore, to target not only the cities but also the rural areas, a wide-reaching sales channel network is needed. As such, the ability of a joint venture to make use of sales channels that have already been created is a major advantage. However, to introduce high value-added products/services to the Indian market, which is very price sensitive, a Japanese company would have to play a central role in increasing sales skills and expertise so that such high value-added products/services could be sold through the existing sales channels.

• Accounting, finance, personnel management and general affairs

It is difficult for Japanese personnel to deal with India's complicated tax and administrative procedures, the design of the wage and welfare/benefits systems, the risk of labor disputes and the management of the service level of external suppliers. Faced with this situation, it would be effective to call on an Indian partner company to provide personnel resources or to provide advice if a problem arises. However, these matters are less important than the above-mentioned business functions such as procurement, product development/design, production, logistics, sales and after-sales service. In addition, among Indian companies that have a certain level of competence, there is little difference in their ability to handle these matters. Therefore, these matters do not influence the selection of a partner company.

• Corporate culture

In addition to the evaluation of the functions mentioned above, it is also necessary to look at corporate culture. Whether cooperation and collaboration related to business and corporate functions can be easily obtained as well as whether the risks related to compliance can be minimized are highly dependent on the corporate culture of a partner company. In selecting an Indian partner company, it is necessary to determine whether it is possible to maintain a trustworthy relationship over the long term as well as whether a joint venture can be operated with a high level of mutual commitment (degree of involvement). This can be done by means such as holding meetings with the senior management of a potential partner company, touring its offices and factories, talking with its employees and conducting an internal assessment using an external advisor.

In addition, even if a potential Indian partner company says, verbally, that it is capable of doing something, it sometimes does not actually have adequate management resources or expertise to realize what it said. There are also cases where because the owner/president of a company makes all of the decisions, employees under such president are not well fostered, or they have little decision-making ability or little capability to improve the quality of business.

Even if the top management of Japanese and Indian companies relates well with each other, if high scores are not obtained for all of the above-mentioned factors, a different potential partner should be sought. Otherwise, a Japanese company should choose to establish a joint venture in which it provides most of its management resources itself, without relying on an Indian partner.

III Main Issues Related to a Joint Venture Scheme

A joint venture can be thought of as a "box" that is designed to contain the business of the joint venture. The content of a joint venture business as well as related rights and responsibilities is defined by a "bundle (sum)" of multiple rights and obligations arising among three parties, namely, a Japanese company, an Indian partner company and a joint venture. Negotiations are conducted on the basis of "joint-venture terms" in which issues and solutions are listed. Ultimately, written agreements are created, which include shareholders' agreements, articles of incorporation and license agreements.

In this chapter, consideration is given to the joint-venture terms, that is, "issues and items to consider related to joint venture negotiations" in the following order.

(1) Which party holds the right of management
(2) Defining business areas (range of cooperation and competition)
(3) Reaching agreement on various functions related to business and corporate management
(4) Decision-making methods in the event of any disagreement between parties

1 Holding the right of management

The right of management is defined by the equity stake, the right of appointing directors including the managing director and the voting right. Upon considering all of these factors, which party will take the management leadership role is determined.

Looking at the format whereby a foreign company enters the Indian market, there has been a recent trend toward a foreign company taking the leadership of business deployment such as majority joint ventures, in

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addition to sole proprietorships and acquisitions. As mentioned in Chapters I and II, a joint venture is not always a permanent arrangement. If a foreign company considers a joint venture as a central business base in the Indian market, the company should take hold of the management leadership so that arrangements can be made in a way that is advantageous to the company even if a review of the joint venture becomes necessary in the future.

With respect to sales agencies and subcontractors, a Japanese company should have strong governance over them. Otherwise, there may be cases in which a company enters the Indian market by placing a great deal of dependence on an Indian partner company to see which way the wind blows due to the uncertainties of the Indian market and business. Such large dependence will make it easier for the company to withdraw from the Indian market if the company subsequently deems the market to be too challenging. If this type of strategy is adopted, one way of pursuing this approach is to take a minority stake in a joint venture. Nevertheless, other options such as licensing and entering into import sales agent agreements should also be considered.

In most cases, a potential Indian partner company wants the majority stake in the same way as does a Japanese company. In such cases, joint venture negotiations may derail if neither party gives in to the other. However, if the Japanese company is able to logically impress upon the potential Indian partner company the greater value that it provides and its high level of commitment, there is the possibility of the Japanese company being able to acquire the majority stake in the joint venture. In this kind of situation, the most effective and persuasive material includes the value that each company can bring to a joint venture and the way in which each assumes responsibility.

If the Japanese company were to take the leadership role, although it will have the right to make management decisions, it must also take responsibility for those decisions. As such, the company must be prepared to face the many difficulties that are assumed in the Indian market and must be resolved to work through the problems until it attains success in the market.

During negotiations, although the focus tends to center on matters related to management rights such as the equity stake, it is vital to formulate a policy and establish tactics prior to negotiations for other issues such as business areas.

2 Strategically defining the range of collaboration and competition

In forming a consensus for a joint venture, it is important to explicitly define the business areas in which it will operate. First, by specifying the business areas, it will be possible to clarify the target business operations to which each party commits itself. In addition, by defining the business areas in which companies will and will not cooperate, a Japanese company can ensure its freedom in the future, as well as can reduce the potential for competition with an Indian partner company.

The matters that must be clarified in defining the business areas include:

- Who (= business operating entity)
- What (= products/services)
- When (= business operation period)
- Where (= location)
- To whom and in what way (= business content, conditions related to monopoly and exclusivity, etc.)

Some specific examples are given below.

(A) Thoughts on defining the right of business (goodwill)

The thoughts behind the concept of defining the right of business are explained in "Sales and after-sales service," Item (5), Section 3, Chapter III. In the following paragraphs, only examples of defining the business right are introduced (Figure 4).

For sales in a third country other than India, there are cases in which an affiliate of a Japanese company that operates in the third country has exclusive business rights (monopoly goodwill), thereby avoiding competition with an Indian partner company and enabling the Japanese company to acquire sales margin.

In other cases, a matrix is created by products and areas without giving the right of business to a joint venture. Based on this matrix, the areas in which a Japanese or an Indian company has exclusive business rights and those in which both companies have the right of business are clearly defined. In some cases, a Japanese company primarily targets third countries, while Indian companies tend to concentrate on India's domestic market.

(B) Dividing roles with a wholly owned subsidiary, etc.

There are also cases in which the target products that will be produced and sold by a joint venture are limited. Upon acquiring expertise for operating in India through a joint venture, a Japanese company sets up a new wholly owned subsidiary, which manufactures and sells other products. In 1997, Komatsu established a joint venture with Larsen & Toubro (L&T). The new company was called L&T-Komatsu, which manufactured and marketed hydraulic excavators in India. Subsequently in 2006, Komatsu established a wholly owned subsidiary, Komatsu India, to manufacture and sell dump trucks that were targeted at the mining industry.

Similarly, Cummins, mentioned in Chapter II, has also established the essentially wholly owned Cummins India, in addition to the Tata-Cummins joint venture. The business entities are clearly separated—while Tata Cummins is purely a manufacturing joint venture, Cummins

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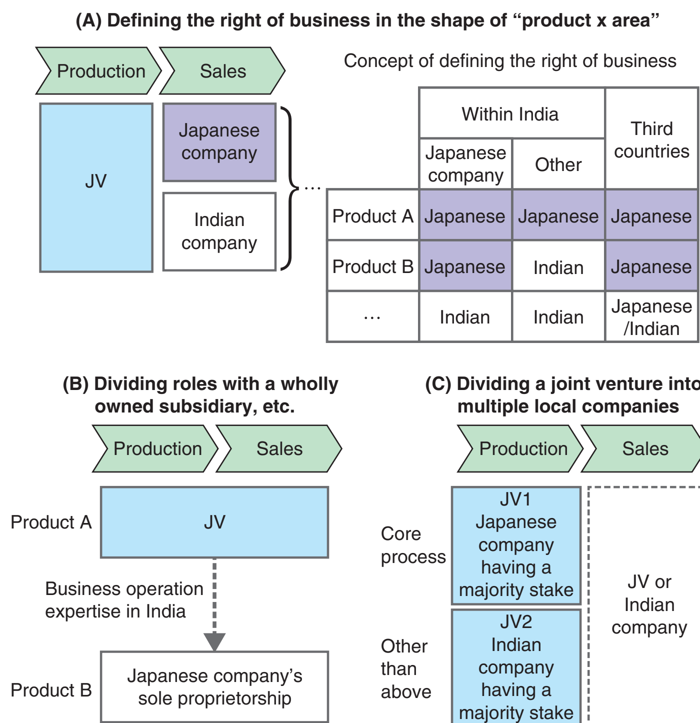
Figure 4. Examples of methods of defining business areas



India has both manufacturing and sales functions. By so defining, Cummins India can operate in the segments in which Tata Cummins cannot freely trade.

(C) Dividing a joint venture into multiple local companies

One notable joint venture of this type is that of Alstom. Alstom first entered the Indian market by licensing its coal-fired power plant technology to BHEL, an Indian state-owned manufacturer. Subsequently in 2009, Alstom established two joint ventures with Bharat Forge, a leading Indian manufacturer of forged products. One of these joint ventures manufactures turbines and generators that require a high level of technology, while the second joint venture manufactures other peripheral components. Alstom has a 51-percent stake in the former, and a 49-percent stake in the latter. It is assumed that both Alstom and Bharat Forge had wanted a controlling interest in the joint ventures, but that they compromised by splitting the joint ventures according to their respective competencies, with each having management rights over the operation in which each has strength.

3 Handling five functions related to business and corporate management

In the following items, the approaches and necessary considerations related to parts of the issues that often constitute topics of discussion during joint venture negotiations are described for each of five functions, namely, product development/design, procurement, production, logistics and sales/after-sales service (Figure 5).

(1) Product development/design

- A Japanese company must take the leadership when it plans to deploy products under its own brand or when uniformity with a global product strategy is necessary

Given that the Indian market is extremely price sensitive, potential Indian partner companies tend to request continuing to sell products that are low priced and therefore easy to sell, even though they are old models. Actually, there have been several instances of joint ventures where a Japanese company had not been able to easily receive the agreement of an Indian partner company regarding model changes in line with its global standard products, making it difficult to enjoy the economies of scale through global procurement.

In addition, when global standard products or customized versions of these products are to be offered in the Indian market, a need arises to work closely with the product development department of the Japan head office.

The offering of products under a partner's brand that has already penetrated the Indian market provides a major benefit for a Japanese company in that it is easy to deploy business in India. However, this approach should be treated with caution in consideration of the possibility of dissolving a joint venture in the future and/or deploying the products under its own brand.

In light of these possibilities, when global standard products under its own brand are to be offered to the Indian market, or conversely when there is a possibility that the products developed in India are to be offered in the global market, it is important for a Japanese company to take the initiative in product development/design.

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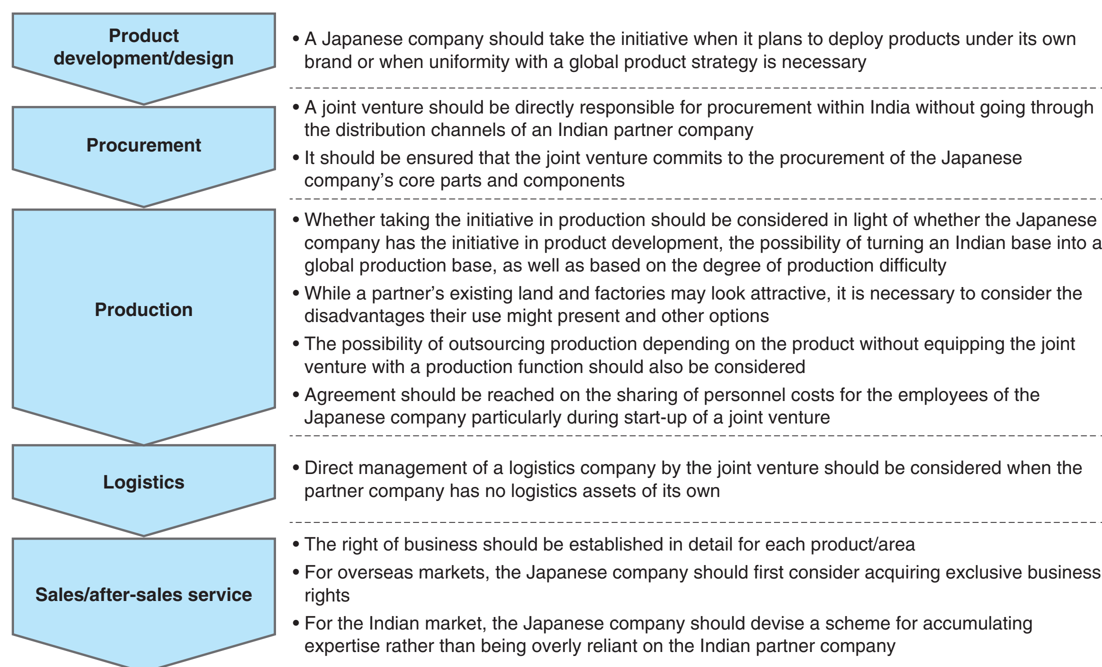
Figure 5. Examples of items to consider during negotiation for each function



Upon taking such initiative, it would be effective to dispatch marketing personnel from an Indian partner company to a joint venture in order to develop products that are suited to needs particular to the Indian market, as well as low-cost products.

When products that are completely different from anything that it offered in the past are to be developed specifically for the Indian market by making use of part of a Japanese company's product development technology and expertise, when an Indian partner company's existing products are to be used as the basis for the joint venture products, or when the business of an Indian partner company is transferred to a joint venture, the initiative for product development can be shared between the two companies.

(2) Procurement

• A joint venture should be directly responsible for procurement within India

While one advantage of having an Indian partner company is the ability to draw on the partner's influence on suppliers, unless there are some explicit advantages such as a considerable volume discount that can be expected by the amount procured by a partner company plus the amount procured by a joint venture, it is preferable not to let the partner company become involved in procurement channels. A better option would be direct procurement by the joint venture. The main reasons for the recommendation of direct procurement include that the charging of margin by the partner company would drive costs up and that a Japanese company would be less likely to be able to accumulate procurement expertise that is vital to low-cost production. While requesting the partner company to share its list of suppliers and its evaluations of suppliers, the joint venture should perform its own evaluations of suppliers, negotiate with them and discover new suppliers.

Conversely, when importing products from overseas, a Japanese company could add its own margin. However, again, unless the Japanese company could show a clear advantage such as receiving a volume discount, it would be difficult to gain the consent of a joint venture.

• Obtaining a joint venture's commitment to the procurement of a Japanese company's core parts and components

Agreement should be reached that the joint venture will procure the core products (parts and components) manufactured by a Japanese company in its factories in Japan, etc. If the Japanese company's core products incorporate some kind of unique production technology, it might be necessary to enter into a license agreement.

(3) Production

• Whether taking the initiative in production should be considered in light of whether a Japanese company has the initiative in product development, the possibility of turning an Indian base into a global production base, as well as based on the degree of production difficulty

When a Japanese company has the initiative for product development, or if there is any possibility of turning the Indian base into a global production base in the future, it is desirable if the Japanese company is free, to some degree, to determine product development, procurement, line design, distribution of production lines, etc.

When the degree of production difficulty is not so high, a Japanese company can adopt a method in which

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its involvement in a joint venture is the same as its capital investment in a production subcontractor and in which an Indian partner company is vested with authority and responsibility, whereby the Indian partner company commits itself to production quantity, quality and price.

In cases where production requires a Japanese company's full expertise, production lines should be separated so as to prevent excessive outflow of the Japanese company's expertise, even though assembly workers could be shared between the Japanese company and the joint venture.

• While a partner's existing land and factories may look attractive, it is necessary to consider the disadvantages their use might present and other options

When making use of a partner's existing land, factories and employees, careful attention should be paid to the following matters.

(1) When the joint venture factory is located nearby the partner's existing factory, there is a risk of labor disputes occurring if there is any differential in employee wages.
(2) When employees are used to the operating practices of the partner company, it would be difficult to change their mindset and get them to voluntarily adopt Japanese practices that constitute a strong point of Japanese companies such as "kaizen" and "4S" (seiri (sorting), seiton (set in order), seiketsu (standardizing) and seiso (systematic cleaning)).
(3) With respect to land and factories, it is necessary to adopt a flexible approach because other options are available. These options include acquiring new land through a partner company, leasing a partner's land and factory to a joint venture, establishing a factory in an industrial park and acquiring land through a land broker.

• Considering the possibility of outsourcing production depending on the product without equipping a joint venture with a production function

For example, if a joint venture is to produce a product that uses technology that is actually several generations old, it might be better to consider the possibility of outsourcing production rather than manufacturing within a joint venture. In the case of fast-moving consumer goods (FMCG), American and European manufacturers have already entered the Indian market, and have production consignment agreements in place to manufacture their products locally. It would be difficult to outsource production to a subcontractor that is exclusively producing a specific manufacturer's products. However, by finding an Indian manufacturer having experience in consignment production, outsourcing production to such a manufacturer would reduce the investment cost risk and thus would provide an effective way of entering the Indian market.

• Reaching agreement on the sharing of personnel costs for the employees of a Japanese company particularly during start-up of a joint venture

When starting the operation of a factory, there are cases in which it is necessary to dispatch a large number of Japanese engineers or engineers from already established overseas production facilities such as those in Thailand. The same applies to other personnel such as sales representatives. In order to prevent problems from occurring later, it is necessary to include the sharing of personnel costs for employees at the Japanese company side in the items to be negotiated for the joint venture terms, with the goal of having the joint venture bear these costs.

(4) Logistics

• Adopting the direct management of a logistics company by a joint venture when a partner company has no logistics assets of its own

India's logistics infrastructure such as roads, railways, ports, airports and warehouses is underdeveloped, and the quality of its logistics companies is low. The logistics industry is not yet well organized, with many logistics companies serving a single area. The bribery of officials and truck driver unions is commonplace. If the Indian partner company has already established a logistics network, it would be extremely advantageous to draw on its accumulated management expertise of logistics companies.

However, if there would be no clear advantage such as cost reduction by consolidating shipments of the joint venture's products with those of the partner, it would be desirable for the joint venture to be directly responsible for issuing orders and managing logistics companies.

(5) Sales/after-sales service

• Establishing the right of business (goodwill) in detail for each product/area

The right of business (goodwill) should be established in detail for each product and for each area in order to maintain the freedom of a Japanese company to do business, to reduce the possibility of competition with an Indian partner company and to clarify who is responsible for marketing the products that will have a major impact on profit. One way of handling the case in which sales and marketing efforts are made individually by both the Japanese company and Indian partner is to define the respective business rights in the shareholders' agreement without giving such rights to a joint venture and with each company (the Japanese company and the Indian partner, respectively) having such rights.

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• For overseas markets, a Japanese company should first consider acquiring exclusive business rights

Considering third-party countries outside India, a Japanese company often has a better developed sales network and more customer contacts than an Indian partner does. In order to rule out the possibility of competition with the partner and the resulting loss of customers to the partner company as well as to maintain the freedom of doing its own business, the Japanese company should first consider acquiring exclusive business rights for third-party countries. However, some Indian companies have sales channels covering South Asia, the Middle East and Africa by making use of their overseas Indian networks. Options available in such a situation include a method in which neither party has exclusive business rights for third-party countries, as well as a method in which, while the partner company has exclusive rights, the joint venture contracts with customers directly and pays the partner company a commission, whereby the Japanese company can acquire customer contacts and sales expertise.

However, if the Japanese company were to hold exclusive business rights for third-party countries, the Japanese company naturally assumes part of the responsibility for increasing sales and raising the factory operation rate. It should be noted that if sales performance for third-party countries is not achieved as planned, the Japanese company could be held responsible, and the partner company may require the Japanese company to explain sales conditions or present information on customers and projects.

• For the Indian market, a Japanese company should devise a scheme for accumulating expertise rather than being overly reliant on an Indian partner company

When partnering with an Indian company, Japanese companies most commonly look to Indian companies' sales abilities within the Indian domestic market, particularly for Indian customers. However, rather than being totally reliant on the Indian partner, the Japanese company should open up the possibility of being able to market products itself by developing a system in which the Japanese company can retain equal bargaining power with the partner company.

One way of achieving this purpose is defining areas in which either the Japanese company or the partner company has exclusive business rights for each product/customer segment (for example, the products of the Japanese company that are targeted at Japanese companies) and areas in which both parties hold business rights. The available option in such a case is to establish a wholly owned subsidiary having a sales function without handing over the business right to a joint venture.

There are also cases where exclusive business rights for the Indian market are granted to the Indian partner company. In such cases, an agency agreement should be signed between the joint venture and the partner company. In this agreement, it is effective to agree on the payment of incentives in accordance with sales targets established for a limited period as well as on a review of the agreement if the partner company fails to achieve sales targets. The Japanese company itself should also gather marketing information so as to enable it to ask for improvements and, in some cases, require the partner company to review the sales strategy/plan if sales fail to grow. The reason behind this suggestion is that if the existing sales channels of the partner company are used to deploy sales activities, there tend to be across-the-board promotions aimed at the partner's existing customers, with the sales methods and resources not being optimized to the products being offered by the joint venture.

Another effective approach involves giving the partner company exclusive business rights, with the joint venture selling directly to customers and a commission being paid to the partner. This approach is effective because the value provided through sales activities and its compensation become clear and, at the same time, the Japanese company can gain customer contacts and accumulate sales expertise.

(6) Division of roles for corporate management functions

With respect to the division of roles as it relates to business and corporate management functions as described above between a Japanese company, Indian partner and a joint venture, except where flexibility is required, the practicability must be ultimately guaranteed by the terms and conditions agreed upon between the parties. These terms and conditions include those concerning the appointive power of the head of each function organization and the bearing of cost based on contracts with the joint venture (license contract, sales contract, etc.) as well as concerning where responsibility lies. Failure to clarify these matters and the resulting vagueness could lead to problems arising at a later date. While it is important to build mutual trust and adopt an attitude of being in the same boat, as major premises for such a trustworthy relationship, each party's roles must be clarified as much as possible by defining the roles as far down as the functional levels for which responsibility and authority are specified.

4 Decision-making methods in the event of disagreement

While a major premise of a joint venture is that there should be mutual trust between the parties, the intentions of the parties involved do not always match. When there is a difference of opinion, discussions might be unable to proceed. To ensure the smooth implementation of business, it is important to have a predetermined method of dealing with any such disagreement.

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One of the issues that should be predetermined is to what extent the right of minority shareholders can be reflected in making decisions. In particular, if a Japanese company only has a minority stake, it is necessary to specify a wide variety of provisions to prevent the making of important decisions outside the range of the influence that the intentions of the Japanese company can have. Specifically, such provisions include:

- Important management decisions may not be made without the agreement of the Japanese company (veto right)
- Shares may not be transferred to a third party without the agreement of the Japanese company
- Management may not be transferred without the agreement of the Japanese company
- The shares held by the Japanese company should not be subject to dilution through an increase of capital without permission of the Japanese company

In addition, it is also important to define a decision-making process to be applied when neither party concedes (deadlock). For example, in the event of the joint venture being wound up, it is necessary to determine how the price of the shares in the joint venture will be decided prior to their being transferred or acquired. Even if a deadlock does not arise, as explained in Chapters I and II, the joint venture may be dissolved as a result of the parties pursuing different strategies. What is important in such cases is to have a predetermined method of distributing resources, contracts/rights and liabilities.

It is said that in India, if matters agreed on between the parties are not defined in the articles of incorporation, these agreements are less likely to be effective. Therefore, any such agreement should be specified not only in the shareholders' agreement, but also in the articles of incorporation, which must be registered. Any amendment to the articles of incorporation should be a matter that requires a resolution at a general meeting of shareholders.

IV Management Considerations Specific to Joint Ventures

In this chapter, rather than the general management points that should be considered when starting up business in India, the points that are specific to the management of a joint venture are discussed.

Even if a Japanese company holds a majority stake, it is often difficult to dispatch a large number of Japanese employees, depending on the scale of business. In such a case, day-to-day decision making and operations may be left up to an Indian partner company, such that it is difficult for the Japanese company to be familiar with the running of the business. In addition, problems in terms of compliance might arise.

• Visualization of the actual management status and day-to-day decision making

Consideration should be given to enabling a Japanese company to consecutively understand actual management status, day-to-day decision making and activities by a partner company's employees even if the Japanese company does not dispatch a large number of its employees. To this end, an effective approach involves the "visualization" of business operations and decision making through clarifying the responsibility and authority of each organization and each employee, management accounting and creating and sharing minutes of meetings. This approach is particularly important for the Japanese company if it does not have full control over the joint venture.

• Retaining decision-making rights and dispatching a "watchdog"

Another useful approach involves limiting the decision-making authority of on-site personnel, introducing a management committee and council system for dealing with major undertakings and large expenditures, having the Japanese company hold the top position and decision-making authority in the area of accounting and finance, or dispatching necessary personnel from Japan in order to assist with understanding certain information.

• Fully utilizing decision-making organizations

With the establishment of a joint venture, despite thorough discussions being held in advance, differences of opinion regarding the operation of business may arise after the start-up. This is particularly true in terms of a sales plan that is linked directly to revenue, the degree of the achievement of such a plan, product model changes, the cost of procuring core components from a Japanese supplier, license fees and the bearing of the costs incurred by Japanese employees for their stay in India. If these matters are left up to on-site personnel in charge, it would be difficult to find a solution. Moreover, as mentioned at the beginning of Chapter IV, it is likely that problems would occur if part of the operation were to be entrusted to a partner company. Therefore, the board of directors and the corporate management committee need to act as forums where consensus can be achieved and agreement can be attained between the parties by holding in-depth discussions and without leaving these matters to personnel/departments in charge.

• Limiting the range of information sharing

Close attention should be paid to the degree of information sharing with a partner company. In particular, careful attention should be paid to core information such

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as that related to unit cost, the selling price applied to a Japanese company's customers, key persons and technology.

V Items to Consider in Entering into Joint Venture Negotiations

In concluding this paper, the authors would like to mention some unique features related to Indian companies seen at the venue of joint venture negotiations, and items to consider with respect to such features.

There are three main features that distinguish joint venture negotiations with an Indian company. The first relates to the fact that many Indian companies have a president who is also the owner, constituting a top-down structure. This top-down structure requires rapid decision making on the part of a Japanese company. Second, even though Indian companies recognize and respect the technological abilities and expertise of Japanese companies, they will maintain a bullish posture in negotiations. Third, because friendship networks are important in India, the "naniwabushi (maintaining harmony and avoiding conflicts)" strategy works in many situations. This chapter describes the items to consider when entering into joint venture negotiations based on these features.

Not to mention the need to establish the Japanese company's strategy before engaging in negotiations, it is necessary to carefully devise tactics such as how to use bargaining chips and evaluation criteria. If the Japanese company is equipped with such strategy and tactics, it would be possible to enter into negotiations without being overwhelmed by the momentum of the negotiating party. Moreover, by giving the representatives of the Japanese company the authority to make decisions at the negotiating table, negotiations with Indian companies that often prefer to make decisions on the spot will go more smoothly.

In order to take the initiative in joint venture negotiations, it is important to fully understand the Indian market and the Indian company that will act as the company's partner, without mentioning the markets of third-party countries. The use of external advisors is also an effective means of being equipped with such information.

Prior to the start of any negotiations, or in the early stages of negotiations, it is desirable to identify the key persons of the Indian company that could become a partner, and to establish relationships with such key individuals. Therefore, for the sake of maintaining consistency, the persons in charge of negotiations in establishing a joint venture should be those who can undertake business jointly with the partner company by being dispatched to the joint venture so as to build a trustworthy relationship with the partner company.

Companies from other countries also frequently approach Indian companies, either to let them act as potential joint venture partners or with an eye to taking over those companies. So as not to miss any business opportunities and at the same time, in order to implement a Japanese company's future strategy in an advantageous way, joint venture negotiations should be conducted carefully and in a speedy manner, based on the points and matters that are discussed in this paper.

The authors hope that while leveraging a joint venture as one means of entering the Indian market, Japanese companies can play an active role in the Indian market, which could act as a stepping stone to the South Asian, Middle Eastern and African markets.

Wataru KADOBAYASHI is a group manager at NRI India's Business Strategy Consulting Division. His specialties include planning business strategy, supporting the implementation of M&A/alliance, sales reform and forming infrastructure projects.

Yohei TEZUKA is a consultant at NRI's ICT & Media Industry Consulting Department. His specialties include planning M&A strategy, overseas business strategy and PMI strategy.

Minoru AOSHIMA is a partner at NRI's Consulting Division. His specialties include planning M&A strategy, PMI strategy and support of its implementation, head-office reform and sales reform.

Amit KUMAR is a division head at NRI India's Business Strategy Consulting Division. His specialties include formulating strategy to enter the Indian market, supporting the implementation of alliances, sales reform and forming infrastructure projects.

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Inquiries to: Corporate Communications Department
Nomura Research Institute, Ltd.
E-mail: nri-papers@nri.co.jp