

# Joint Ventures, An Opportunity For The Business Development In Albania

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## Abstract

It is noticed that the wider environment of Albania does not have a clear understanding of JV. With regret we can say that the joint venture continues to be treated as an outdated form and tool or as a form that is valid temporary, so only in the phase transition of the economy where the possibilities of starting the business again by natural or legal persons were still quite limited and that the JV is a legal form which can be used mainly by the state in its initiatives to merge the interests of capital and foreign investors, so as a means of incentives, attracting foreign investment, etc. While the JV is used in large-scale international business, it should be explained the importance of its use at every stage of economic development and, especially, in the era of economic globalization, political and ideological.

**Key words:** Albania, Joint-Ventures, Economy, Opportunities, Business

## 1. Introduction

By evaluating the experience of many foreign companies that use for different purposes of Joint Ventures and recognizing experiences, generally, not Albanian satisfactory for various reasons, may apply to withdraw the attention of that part of the Albanian community already involved in economic activity, or the part that wants to be involved in this kind of activity, the benefits of using the shape of JV (joint ventures). This theme focuses on the definition of joint venture and its types, advantages and disadvantages, the benefit of the management from the use of JV and its causes of failure in Albania.

## 2. Definition and types of joint ventures in Albania

Joint-venture is one of the types of legal relationships between individuals and entities to achieve a common goal. Joint-venture means a joint venture of two or more partners to achieve a common goal which, generally, is a business purpose for performing mainly of a particular economic activity and activate upon by the parties so common sources of their best, which are complementary and compatible with the other party.

✓ Joint-venture contractor

The first form of joint-ventures is that contracting, which means that a natural or legal person, party to a joint-venture contract, maintains unchanged its identity and legal status. This contract based on provisions of the Civil Code of the Republic of Albania on ordinary society. "Society is a contract by which two or more persons agree to exercise an economic activity, in order to share profits derived from it." (Julian Ellison & Edwart Kling)<sup>437</sup>

### Advantages of Joint-Venture contractors.

a) Easy to create. Joint-venture contractor does not require the establishment of any particular mechanism or structure, is not subject to any formal registration or approval by any state organ (in this analysis excluded joint-venture where a partner is an enterprise or state owned)  
b) Easy to function. Activity of a contractual joint venture may be organized in any way that parties see appropriate to serve their purposes.

c) Responsibility. While the joint-venture agreement doesn't provide otherwise, each party to the joint-venture contractor in principle will be solely responsible for its actions.

d) Easy to solve. There are no legal requirements set for the resolution of a joint-venture contractors.

e) Transparency. While it is not creating a separate legal entity, a joint-venture contractor is fully transparent for the effects of fiscal liabilities, especially for corporate profit.

Getting accurate data upon which to base valuations and other decisions can be very difficult in some countries, especially where accounting standards are quite different from international standards. Transparency is a particular advantage in former command economies.

f) Maintenance of secret. There is no requirement to publish a notice for the formation of a joint-venture or to make public the existence of joint-venture agreement.

g) Low costs. While in the creation and operation of the JV contractor does not arise and does not include any formal mechanism, avoid the relevant costs associated with the creation, maintenance and function.

### Disadvantages of Joint-ventures contractors

a) Lack of identity. A joint-venture contractor has no structure able to enter directly into contracting with third parties, own any estate or to exercise any right, represent the joint venture before the state.

b) Lack of legal Framework .A Joint-Ventures contractors can be regulated only by general principles for legislation on (contractor) and the provisions of its own joint-venture agreement.

c) The unintentional formation of a partnership. A joint-venture contractor can lead to an unintended Forming of a partnership that may have undesirable consequences, such as strict allocation of profits consistent with contribution every participant or disability to keep immunized from losses contributions one or several participants.

d) Direct and unlimited liability. Every liability that was born directly and every loss that has to do with joint-venture will be held directly and individually by the parties to the joint venture since the collapse of its own joint-venture contractor is impossible.

<sup>437</sup> Julian Ellison & Edwart Kling "Joint Ventures in Europe" Buterworths 1997

*First Example.* Airport Partners is a consortium created by three legal entities: German society Hochtief Airport, the Albanian American Enterprise Fund, DEG, German Financial Corporate. The consortium was formed to participate in the international tender of giving with concession to the "Mother Teresa" International Airport. The consortium that was officially declared the winner, on June 19, 2004, under the law "On concessions" must create concessionary company within 30 days of ratification of the concession contract by the Assembly. The Agreement which was established this joint venture can be considered as a contractual JV.

✓ Joint-venture legal entity (Peter Killing)<sup>438</sup>

The other form of JV is to create a separate legal entity, which is a local company that was created by the joint initiative of two or more domestic or foreign partners. JV legal person is the most commonly used legal and joint-venture, especially from large companies.

#### Advantages of Joint Venture legal entity

- a) Limited responsibility. Responsibility of parties to a JV legal entity is limited to the extent of their contribution in the capital of the JV.
- b) Flexibility in management. Although the law defines strictly the structure of making decision and execution within the company, internal acts of the company define a certain flexibility.
- c) Opportunities for external funding. JV legal person have more access to public capital market, including traded shares or bonds.
- d) Variety of capital. The capital of a Joint Venture legal entity can consist of a fixed part, but that is variable. It means that as a shareholder of the company each partner can join or leave the society, or existing partners may change the amount of capital contribution in changing the internal acts of the company.

#### Disadvantages of a Joint Ventures legal entity

- a) Formation. Creation of a JV legal person requires the involvement of a notary to verify the acts who appear in court for registration.
- b) Lack of confidentiality. Commercial companies are required to submit Registration Office acts of domestic trade of the company and publish certain information.
- c) Defined and limited Purpose. Generally, JV legal entity have a limited purpose specified in the documentation of the Organization.

*Second Example.* As an example of the banking sector we can mention the Italian-Albanian Bank, which was founded in 1992 on the basis of mutual agreement between the Albanian National Bank and Banca di Roma, agreement

approved by the Law number.7649 date 16.12.1992 "On establishment of the Bank of joint Italian-Albanian. Italian-Albanian Bank was created as a joint-venture and in 1996 was registered as a joint stock company with headquarters in Tirana, which will conduct its operations until December 31, 2050 with the possibility for an extension of this deadline by a decision of the General Assembly. Italian-Albanian Bank has as its object the collection of savings and lending in different forms. The capital was 10 million U.S. dollar share for each party 50/50. After 2000, 20% share of Italian-Albanian Bank are sold to EBRD and the percentage of the selling shareholders is reorganized: 40% of shares owned by the Ministry of Finance, 40% of Banca di Roma and 20% of the EBRD.

✓ Mixed or hybrid form

Mixed or hybrid forms of joint-venture, although theoretically are recognized, are not recognized by the Albanian legislation and so far no data indicating their practical use.

### **3. Which are operational problems for a joint venture?**

Once joint ventures are in operation, they may experience various problems, some of which might have been foreseeable at the time the agreement was negotiated, others of which could not. Many joint ventures undertaken in developing countries involve large MNCs that participate in a variety of other joint ventures and run wholly owned subsidiaries elsewhere in the world. The developing country firms that are their joint venture partners, though they may be quite large by local standards, are often dwarfed by their MNC partners. One possible source of difficulty, for example, is the differing basic objectives of the two types of firms. An MNC (Multinational Company) may hope the joint venture will operate in a way that will be optimal from the standpoint of its entire global network, not merely within the local market on which their domestic joint venture partner usually focuses. (Robert Miller, Jack Glen, Fred Japersen and Yannis Karmokolias, 1996)<sup>439</sup> These differing objectives can lead to a variety of disagreements, including the following:

- *Export rights.* Typically, the MNC would prefer not to allow the joint venture to export products, which may be of inferior quality (compared with those it manufactures elsewhere), into markets already served by other manufacturing points in its own system. It therefore favors insertion of strict export limitations into the agreement in such situations. The developing country partner, however, often has quite different ideas, looking to the venture as a natural vehicle for expanding into foreign markets. In most of the agreements we examined, exports were restricted in one way or another

- *Tax issues.* An MNC generally wish to minimize its worldwide tax burden. This objective can dramatically affect its relations with a joint venture, especially when the latter either imports parts and components from the MNC or, as is usual, exports products through the MNC parent. The MNC may manipulate transfer prices—that is, the prices charged

<sup>438</sup> Peter Killing "How to Make a Global Joint Venture Work," Harvard Business Review, Vol. 60 (May/June 1982), pp. 120–27. Finance & Development / March 1997 29. This article is based on the authors' *International Joint Ventures in Developing Countries*, IFC Discussion Paper No. 29 (Washington: World Bank, 1996).

<sup>439</sup> Robert Miller, Jack Glen, Fred Japersen and Yannis Karmokolias, 1996 "International Joint Ventures in Developing Countries", IFC Discussion Paper No. 29 (Washington: World Bank).

by one part of the MNC when transferring them to another part—to lower its taxes, a strategy that is not necessarily in the interests of the local partner.

• *Dividend and investment policies.* The MNC partner may have global investment programs that involve transferring of funds from one region to another. It might, therefore, prefer to receive dividends from the joint venture instead of reinvesting earnings, a position not necessarily compatible with that of its domestic partner. The opposite situation—in which the MNC partner is content to delay dividends in favor of faster expansion, and the local partner demurs—also occurs on occasion.

• *Differences in partner size.* The local partner is likely to be considerably smaller than the MNC partner, a difference that can have important consequences for operating the joint venture. MNC managers note, for example, that early, rapid expansion of the venture can require substantial capital infusions that the developing country partner may not be able to provide. It is also true, however, that the joint venture may be far more important to the smaller partner than to the MNC partner; several managers we spoke with noted that the joint ventures they were involved in seemed to be unimportant to the MNC and to have received too little of its attention. The MNC might assign managers to the venture on rotating basis, allowing too little time for them to become truly effective there.

#### 4. JV MANAGEMENT AND BENEFITS FROM THEIR USE

A joint venture may return a usable source in profit, create a new profit center, helps to enter unexplored markets quickly and with less cost than if the only try. Do you think that a joint-venture is a good method to succeed in your business?(Vasilika Kume)<sup>440</sup>To answer the question raised, below you will find listed the benefits of using joint-venture:

- a) JV can be used to reduce political risk, economic, financial, business and especially its beginning.
- b) JV can be used to enter or to expand in the domestic market and in new foreign markets and to enter in static markets (to simplify the process of entering new markets);
- c) To gain intellectual property rights and franchising using some of the rights of his partner in JV;
- d) Establishment of JV, can serve as a preliminary stage of the privatization of state property (to provide the opportunity to prove the advantage of operating such state offering part);
- e) The joint venture is an alternative method for developing the strategy, particularly growth strategies or example conglomerate diversification.

*Example 3.* Rogner has used as a mechanism for expansion in Albania in the form joint-venture entity with the EBRD in the amount of ~ 10% of the investment by providing cash-flow in the moment of construction of the Rogner and convertible into participation in the capital (equity) . Here is benefiting from special tax status of the EBRD on the basis of agreement that the membership of Albania into international treaty agreement EBRD. This agreement as an inter national agreement lies on national legislation and

<sup>440</sup> Vasilika Kume, “*Strategic Management*” (theories, concepts, applications), Publication 2003

that provides the EBRD tax exemptions and, for this reason, excluded from the dividend tax who transferred out of the EBRD.

#### 5. Causes of failure to successfully JV in Albania

If you refer to statistics, we have a large number of JV that are in liquidation procedures. In the other group are societies that have ceased activity and societies that are in judicial conflict in international courts .We should not mention the ones that continue although with problems. JV causes of the problems created between the Albanian state enterprises and foreign or domestic partners are:

\* Change occasional special Albanian legislation on joint-venture. Further legislation, labor legislation and tax legislation has changed.

\* Having adopted a legal framework for the entry of foreign capital in Albania emerged key problems for the functioning of their starting capital and ownership of the issue of proportionality partners. Legislation defines clearly the part of foreign participation to exceed 50 % foreign participation that made the state partner virtually impossible to influence decision- making of society.

\* obligation to exercise state control and audit control over the state does not lie only on this part but, even in the intervention of foreign partner.

\* Do stability of political and economic situation in the country.

\*Lack of support systems of economic activity (non-developed banking system, the unstable-especially infrastructure, energy and water supply).

\*Lack of state capacity assessment studies advantages.

\* Diseases of the state administration during the transition years also have consequences in the functioning of the JV in Albania (corruption, bureaucracy, etc.)

\* As is said above, a cause of failure is the non-use of advocacy services (specialized legal opinion).

\* Finally, you can say that instead of administrative interventions fruitless joint ventures were in need of certain beneficial policies and legal frameworks specified subsidiary.

#### 6. Conclusions

• Joint-venture is a legal form very attractive and very profitable for every organization that should be taken into consideration in decision making.

• Establishment and functioning in accordance with targeted goals of joint-venture management requires a high level.

• A contractual joint venture may be the most appropriate form for a joint-venture that will not contract with third parties, has assets owned, to apply for independent funding or seek to have legal personality.

• JV legal entity is seen as a form quite appropriate when required to apply business long-term projects, in cases where required not-floated management structure, etc..

• In a summary, problems that have emerged from the operation of the JV in Albania, we can group the: 1. Economic Problems 2. Legal Problems 3. Cultural Problems.

• Joint-venture is a form which brings benefits not only in microeconomic terms, the benefits of joint-venture in

macroeconomic plan are also very important.

- Joint-venture is used and can be used successfully in many sectors of the economy and areas of business. In Albania, JV is used in agriculture, in the heavy industry, food industry, tourism, hotel industry, heavy industry, energy industry, construction, banking, service sector, transport, the NGO sector, etc..

- Although no joint venture agreement can serve as a substitute for the commitment of the partners, even deeply committed partners can expect to have conflicts. A suitable agreement, therefore, is a vital component of a successful relationship. Such an agreement does not have to be an overly legalistic document to provide the basis for overcoming these future conflicts in an orderly manner.

- The agreement is best considered as a "living" document, in the sense that among its provisions should be procedures for changing the agreement. Partners need to realize at the outset that their respective comparative advantages in the joint venture can change over time. Such ventures, after all, necessarily entail power relationships. Wise partners make sure that their companies are vital to the venture's success over the long run. It is not sufficient for firms to depend on their intimate knowledge of

government affairs or familiarity with local financial markets if they wish to have continuing relevance to the joint venture ,since the perceived value of these contributions is bound to erode over time; more substantive advantages—technology, distribution channel control, export control, etc.—will be required.

- Technology transfer is one of the more sensitive and difficult issues confronting joint venture managements. Although the relevant provisions of the venture agreement provisions are important in establishing an operational framework, technology is one area where formal provisions cannot serve as an adequate substitute for good will and understanding between the partners.

- Agreements need to contain fairly detailed provisions covering dispute resolution and, in the event of failure to reconcile differences, the exit mechanism to be employed in terminating the joint venture. Negotiation of such provisions should not

be avoided because of an optimistic belief that good relations will be maintained over the life of the venture, since trying to resolve disputes in an ad hoc fashion can be highly problematic.

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