

**BUSINESS EXPANSION THROUGH  
INTERNATIONAL JOINT VENTURE IN OMAN**



**SIRIYAPORN CHONGNIMITWONG**

**AN INDEPENDENT STUDY SUBMITTED IN PARTIAL FULFILLMENT  
OF THE REQUIREMENTS FOR THE GRADUATE SCHOOL  
STAMFORD INTERNATIONAL UNIVERSITY  
MASTER OF BUSINESS ADMINISTRATION  
ACADEMIC YEAR 2017**

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**The Research has been approved by  
Stamford International University  
The Graduate School**

**Title:** Business Expansion through International Joint Venture in Oman

**Researcher:** Siriyaporn Chongnimitwong

**The Independent Study Committee:**

**Advisor**



( Dr. Mark Rendon)

**Committee Member**



(Assist. Prof. Dr. William P. Wall)

**Committee Member**



(Dr. Lavanchawee Sujarittanonta)



(Mr. Adam Tyler Thompson)

Asst. President, Academic Affairs &  
Dean of Business and Technology

May 2017

**Title:** Business Expansion through International Joint Venture in Oman  
**Researcher:** Siriyaporn Chongnimitwong **Student ID:** 315331017  
**Degree:** Master of Business Administration  
**Advisors:** Dr. Mark Rendon  
**Academic year:** 2017

### **ABSTRACT**

The purpose of this study was to examine how to perform business expansion of Thai company through international joint venture in Oman.

This study begins with an approach from Omani partner to open a business with TC company, strategic tools for business success, due diligence, analysis results of strategic alliance and joint venture, risks of joint venture, advantages and disadvantages of performing joint venture, forms of joint venture, check list to perform joint venture agreement, business model of joint venture and its implementation plan. In addition, this study also attempts to consider its impact and problems on management of joint venture including expectation problem issues in operating of a joint venture, suggestions cross cultural management and techniques to protect conflict issues.

This study contributes to the understanding of the managerial decision marking when they consider to perform the international joint venture as a solution of business expansion in Oman.

**Keywords:** Business Expansion, Strategic Alliance, International Joint Venture, Cross Cultural Management between Thais and Omanis.

## ACKNOWLEDGMENT

The success and final outcome of this independent study required a lot of guidance and assistance from many people. I would like to say thank you to all those who provided me the possibility to complete this report.

A very much thankful I sincerely give to my advisor, Dr. Mark Rendon who advised me suggestions and provided me information regarding international joint venture performing. He supported me starting at the beginning of plan, shared his experience and knowledge.

My thanks and appreciations also go to my colleague in developing the report. They have willingly helped me out with their abilities.

Siriyaporn Chongnimitwong

## CONTENTS

	Page
<b>ABSTRACT</b> .....	i
<b>ACKNOWLEDGMENT</b> .....	ii
<b>CONTENTS</b> .....	iii
<b>LIST OF TABLES</b> .....	v
<b>LIST OF FIGURES</b> .....	vi
<b>CHAPTER 1 FEASIBILITY ANALYSIS</b>	
1.1 Introduction.....	1
1.2 Partner Selection.....	3
1.3 Strategic Tools for Business Success.....	5
1.4 Due Diligence.....	9
1.5 Analysis between International Joint Venture (IJV) and Strategic Alliances (SA).....	11
1.6 Doing Business in Oman.....	12
1.7 Risks of Joint Ventures.....	15
1.8 Advantages and Disadvantages of Joint Venture.....	16
<b>CHAPTER 2 INTERNATIONAL JOINT VENTURES FORMATION</b>	
2.1 Forms of International Joint Ventures.....	18
2.2 The International Joint Ventures Agreement.....	20
<b>CHAPTER 3 BUSINESS MODEL</b>	
3.1 Core Strategy.....	24
3.2 Strategic Resources.....	25
3.3 Partnership Network.....	25
3.4 Customer Interface.....	26
3.5 Marketing and Sale.....	30
3.6 Pricing Model.....	31

## CONTENTS (Cont.)

	Page
<b>CHAPTER 4 INTERNATIONAL JOINT VENTURES MANAGEMENT AND IMPLEMENTATION</b>	
4.1 Cross Cultural Management.....	32
4.2 Organization Structure.....	35
4.3 Staffs.....	37
<b>CHAPTER 5 SUMMARY AND CONCLUSION</b>	
5.1 Summary .....	38
5.2 Conclusion.....	39
<b>REFERENCES</b> .....	40
<b>APPENDICES</b> .....	42
Appendix A: A general example of Non-Complete, Covenant.....	43
Appendix B: A general example of Joint Venture Agreement.....	45
<b>BIOGRAPHY</b> .....	70

**LIST OF TABLES**

	Page
<b>Table 1</b> Simply Flow Diagram for International Joint Venture Performing.....	11
<b>Table 2</b> Shows the Sample Excel Sheet Income Statement for Service Business.....	29



## LIST OF FIGURES

	Page
<b>Figure 1</b> Comparison between Strategic Alliance and International Joint Venture.....	2
<b>Figure 2</b> Structure Management of International Joint Venture “OCTC” company..	36



# CHAPTER 1

## FEASIBILITY ANALYSIS

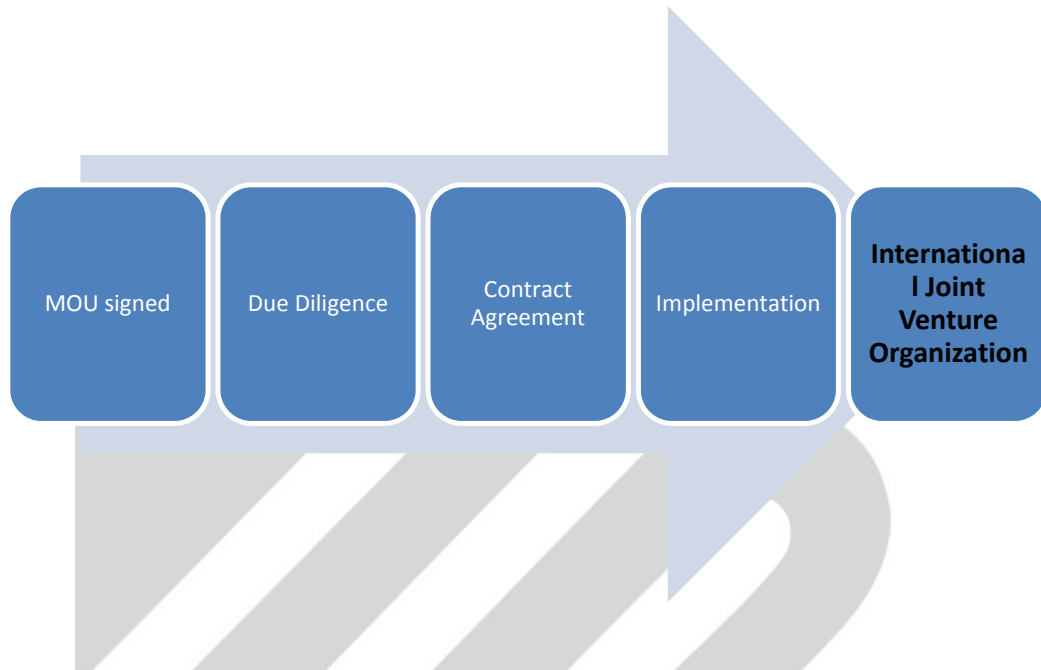
### 1.1 Introduction

TC company is a Thai company providing consultancy to clients focusing on technical capability enhancement, performance enhancement, process safety management and project development in mainly of refineries and petrochemical plants in Thailand. OC is an Omani company which is an operating company to produce transporting oil and petroleum production in Oman. TC company has been approached by OC company from Omani government to open the business in Oman. Ideally is to provide consultancy roles, improve performance enhancement, optimize process units & utilities and energy recovery in the process. Project development and project management are the key concerns from Omani as well as they need to be familiar working as a project type rather than customarily working in operation only.

TC company's vision is to expand its business in overseas. Therefore, this is the good opportunity for TC company to start its business outside Thailand with OC company. It is not only business expansion for increasing sales but it will help company to start going global, improve profits, increase innovation, knowledge development and translation, more customers etc. Also employees will have experience working overseas which is very good for them in the future as their assigned employees can come back to be a senior or management levels. In addition, employees will gain experience in operating skills during working with Omani partner in their real plants.

The author believes that OC would like to gain knowledge how to work as consultancy role because Oman is now increase production of oil capacity both of off shore and on shore business and also would like to connect business in Thailand in the future.

The simplify block diagram will briefly tell about all main processes with regard to performing international joint venture. The Memorandum of understanding (MOU) is already signed. The current status of this study is working on "Due Diligence" phase. As TC and OC companies have different experiences and competencies which will be more benefits for both companies in the future. Next processes will be contract agreement and implementation to the international joint venture organization



**Figure 1:** Simply Flow Diagram for International Joint Venture Performing

### **IDENTIFYING ASSUMPTIONS AND LIMITATIONS**

For assumptions:

1. TC is a major oil company in Thailand. OC is a major oil company in Oman. Both of two companies are real companies in the world.

2. This study is prepared during the due diligence phase for the joint venture. Activities shown after due diligence phase are researched from reference handbook and good experienced suggestions.

For limitations:

1. Finance, taxation and regulatory compliance issues that will impact to this International Joint Venture study will not be addressed.

## **1.2 Partner Selection**

Although Omani partner approached TC company to be a joint venture together for opening a new business as a consultancy role in Oman. However, TC company shall perform partner selection before making decision to join alliance or international joint venture with Omani partner.

There are many steps and criteria for partner selection. All of them might be from the success and failure of the real businesses in the world performing strategic alliances. Partner selection is a source of success, steps most often used (Twardy, D., 2009) can be categorized as following:

### **1.2.1 Identify partnering opportunity in the market**

The importance of partnering opportunity in Oman - Oman is rich in oil & gas. Also Oman is the second largest country in Arabian Peninsula. (Saudi Arabia is the biggest) This country is free trade and open market policy. Political seems to be stable. English is used in business operation. (PKF/RSM & Co., 2011)

### **1.2.2 Define your company's objectives for the alliance**

This step is very important for the company who will join the alliance. The company's objectives shall be defined at the first day during partner selection. If the main objectives are not met by each other. Next process shall be stopped or shall look for other fitted partner. In this case study, the main objectives of TC company will be:

- Business expansion/International business expansion
- Knowledge exchange/Employees exchange
- More channels of customers
- Employee's working overseas experience
- Knowledge Management

### **1.2.3 Negotiating the alliance with the prospect partner**

As information earlier, in this study case, Omani partner is the prospect partner for TC company. Then TC company can directly negotiate the alliance with OC company.

### **1.2.4 Identify partnering needs of your company**

This step seems to be the step of defining TC company company's objectives. But it belongs to partnering's objectives or partnering's needs of TC company. The author believes that the main objectives of OC company will be:

- Increase channels connecting in Thailand
- Knowledge exchange/Staff exchange
- Learning how to be a consultancy role in Oman

### **1.2.5 Writing legal agreement**

Unsuccessful companies of alliances came from alliance agreement without writing legal agreement. (Twardy, D. ,2009) It must be alliances do not take responsibility for their roles as strict as possible. Actually, it does not require legal agreement for all cases of alliances but at least it should have a contract or MOM (memorandum or meeting) between alliances. TC company concerns this issue. However, it depends on the type of alliances which require or might not require legal agreement.

Criteria selection is also a source of success the alliance. Most criteria often used to evaluate the possible partners from the respondents. (Twardy, D. , 2009)

### **1.2.6 Knowledge of the partner**

It is correct to know the knowledge of the partner as will fulfill the alliance company in the future. The form of alliance company must be competitive advantage in the market or in each mother country. Therefore, TC company needs to perform the process "Due Diligence" with OC company and OC company will need to perform this process with TC company as well.

### **1.2.7 Top management support**

Top management of both TC company and OC companies support this strategic alliance as these two companies are the main company in oil production in Thailand and Oman respectively. TC company received formal invitation from OC company's top management and also received supporting from Omani government.

### **1.2.8 Added value for customer**

This is the typical process for TC company. All completing projects shall identify added value for customer. The main service as TC company provided to customer might help customers to solve their problems, provided project training also

expects them to do if the same problems occur. Sometime, helping them to pass stage gate decision from their management which means TC company might work beyond a scope of work (but it should not spend a lot of time to do it). The author believes added value for customers as same as TC company did. It can be used for the new company as alliances between TC and OC companies.

### **1.2.9 Trust and Commitment**

Trust and commitment are important as alliances expect from each other. Contract or even legal agreement will not cover business change, organization or culture changes as different from their strategic goals at the beginning stage. Running operation without trust and commitment will lead to be an unsuccessful company in the future. (Buji, A., 2013)

### **1.2.10 Strategic positioning for the future**

TC company expects to create strategic positioning for the future with alliance. Strategic positioning planning process in the future is very critical and complicate to get it done. However, items shown below can help the strategic positioning for the future: opportunities and challenges. (McDonell, L. ,2011)

- Vision is essential – A vision will help to keep the current strategic value and also strategic value for the future.
- Get outcome clear – Outcomes are from vision and define the success.
- Embrace scenario – Always welcome scenario from employees
- Appreciate the Job to be Done (JTBD) from team members in strategic plan.
- Strategy should be simple, be able to explain it and should make senses to members.

### **1.2.11 Strategic value for the future**

Strategic value of new alliance company between TC and OC companies as providing consultancy role to client. It means that after getting our consultancy. Client can bring it to solve the problem, add more profit of the operating business, adapt the solution to other similar problem.

### **1.3 Strategic Tools for Business Success**

SWOT, PESTEL and Porter's Five Forces are used to analyze TC company with regard to opening new business in Oman. These tools will evaluate to help company's objectives achievement. (Downey, J., 2007)

## **SWOT Analysis**

It is very simple analysis but it is very well known tool for analysis strength, weakness, opportunity and threat of the company involving the business direction.

### **Strengths:**

- Strong technical skills for refinery and petrochemical process improvement.
- Technical training center for engineers in engineering business
- An affiliate company of leading oil company in Thailand.
- Systematic operation such as partnership management, knowledge management, project management guidelines

### **Weakness:**

- Limited opportunity for business expansion to global market.
- Company lacks experience consultant to provide specific services such as process operation excellence, commissioning and start up plant.
- New business consulting company in Thailand, it will take time to bring the company into the market

### **Opportunities:**

- Currently, OC company approached TC company to be a joint venture in Oman.

### **Threats:**

- Other consultancy companies (outside Thailand also) keep looking to attack the marketplace in Thailand
- No legal team to help company to go further for business expansion outside Thailand.

## **PEST Analysis**

It is the external macro- environment to affect the new multicultural joint venture company. It is the tool to understand the political, economic, social-culture and technological on organization.

Political:

Oman has government policy on foreign investment (PKF & RSM., 2011). The government established foreign capital, investment law and guidelines for foreign investment in Oman. Because the government recognized that foreign investment will help to develop Oman's infrastructure, industries and resources. Especially for resources, as known that Oman still needs more expats to work in many companies, and stimulate Omanis to learn some technical skills from them. The policy is still welcome long term foreign investment that will help to develop economic effects in Oman.

**Economic:**

Oman's economic mainly is an oil and gas basis. The Oman's vision to year 2020, is to develop the plan to expand its economy through industrialization and privatization. Several privatization programs include water and power generation programs which are the main utilities of industries, also for waste and solid management operation. The Omani government is still developing for the construction for a port (for crude shipment), airport, oil refinery, petrochemical complex, fish processing and tourism resort complex. (UKessays, 2015).

**Social-culture:**

These factors will involve culture, demography, religion or belief. Current social trends will affect oil and gas industry including the business as will provide service to these industries. Oman is one of national oil company in the world which has a belief that the consumption levels until 2040 will increase comparing to the global population. Natural gas is considered to be cleanest fuel among oil sands, coal and shale gas which natural gas processing is the main involving business as the joint venture will provide service. (Pitatzis, A., 2016).

**Technological:**

This is an interesting topic. Technology may affect to the consulting firm because of advances in social media. Nowadays social media in the world is very high tech, people can ask and get the answer quickly if their queries are not too complicate, the answers from the social media may come from their best practices from their plant. There are many ways for asking such as starting chat asking about the technical queries,

Facebook, LinkedIn, Google and Youtube. For Youtube, there are a lot of VDO clips, slide presentations for explanation if someone posted. The most important thing is free of charges.

### **Porter's Five Forces Analysis**

The Porter's Five Forces tool is to analyze the business situation in the market. It helps TC company to understand the current competitive position and the strength of a position as TC company is moving into. There are five important forces that will determine the competitive power in the business as TC is considering to perform.

#### **Competitive Rivalry: Moderate**

There are fourteen consulting firms in Muscat, Oman. (The joint venture business's location will be in Muscat as same as OC company) None of them has different business type. They are business for tax, computer, energy, manpower and bank. Except Atkins Global company, but I had a look in details its website. It is a similar service for project management or some engineering work type only. Most of them are engineering design which is not same as the new joint venture business in this study.

I also estimate competitive rivalry as moderate level because there are more consulting firms in Oman, but outside Muscat.

#### **Buyer Power: High**

International joint venture business in this study is set to service OC company in Oman. OC is a major oil company and located in Muscat which has a power to use the services from the joint venture company. OC company has a mission to optimize and develop their refinery. Therefore, the services as consultancy roles for improving their refinery and petrochemical plants from the joint venture company can meet their mission.

#### **Supply Power: Low**

Supply power to the joint venture company is negligible importance. Because this joint venture business does not need any raw material or ingredient to produce any

product or service. This joint venture business is set as consultancy roles to provide or suggest best practices to clients. It is a specific business. It is hard to copy by others.

#### **Threat of Substitution: Low**

The joint venture company as performed between TC and OC companies can be considered as “New Business” in Muscat. There are varieties of service packages for improving refinery in Oman. From the research of consulting firms in Muscat, none of company did it.

#### **Threat of New Entry: Low**

New company needs more access for distribution channels in Oman to secure more customers or clients. It is easy to set the new business in Oman but it is not easy to have a local partner to perform a joint venture company.

### **1.4 Due Diligence**

Due diligence is a process to investigate a business or a person before signing a contract. This process is to ensure that all information and operation in that company are systematically used. In this study, OC company will perform this process with TC company. Below are summary guidelines items for the due diligence. (Eban, n.d.)

#### **1.4.1 Financial Information**

- Check annual financial information for the past three years
- Determine financial projection for the next three years (Revenue by product type, customers, channels)
- Capital structure (Current shares outstanding, lists of stockholders)
- Other financial information such as tax positions, history for equity, warrants and debt

#### **1.4.2 Products**

- Description of each product. For TC company, mainly of services and package service.
- Historical and project growth rate
- Timing of new service and product

#### **1.4.3 Customer Information**

- List of top 10 customers for the past two years.

- List of strategic relationships, satisfaction index
- Revenue by customer
- Brief description of any significant relationships served within two years
- List of customer contact information

#### **1.4.4 Competition**

•Market position, strength and weakness of the company as shown in the market place

•Strategic of company competition such as price, added value, technology, distribution

#### **1.4.5 Marketing, Sales, and Distribution**

- Company positioning in the market (including products and services)
- Marketing opportunities and risks
- Customers database and relationships

#### **1.4.6 Research and Development**

- Research and Development organization
- Investigate new product or service pipeline
- Critical technology to implement the company

#### **1.4.7 Management and Personnel**

- Organization chart, senior management
- Headcount of company by function and location
- Human Resources
- Staff trainings and Individual Development Plan (IDP)
- Personnel Turnover
- Significant employee problems
- Company engagement survey

#### **1.4.8 Legal and Related Matters**

- Environment and employee safety issues
- List of patents, copyrights, licenses
- Summary of insurance
- Detail on claimant, claimed damages as brief history

### 1.5 Analysis between International Joint Ventures (IJV) and Strategic Alliances (SA)

To make decision of strategic alliance depends on the company's objectives and also the law and regulation of the countries as business will be located.

The difference between Strategic Alliance (SA) and International Joint Venture (IJV), (Koleva, G. , 2002) can be listed in the table:

	<b>Strategic Alliance (SA)</b>	<b>International Joint Venture (IJV)</b>
Definition	An exclusive partnership	A company owned by two or more independent companies.
Purpose	SA have formal common goals agreement	IJV has a purpose, strategies of parent firms might different.
Boundaries	Defined by partnering firms, often use non-contractual agreement	Contractual or legal agreement often use.
Organization	Taking the core strengths from each organizations to deliver value to your organization	Blending of cultures and create a new organization culture
Resources	Access to have pool resources	Access to greater resources and blending with more skills of employee
Coordination	Difficulties due to informal corporation agreement setting	Easy than Strategic Alliance because it is a new setting company
Relationship	Continuing relationship maintenance	Own leadership team

	<b>Strategic Alliance (SA)</b>	<b>International Joint Venture (IJV)</b>
Operation	Marketing and promotion collaboration, Purchasing and distribution agreements, Joint product development	Run operation facilities in another country. Establish a marketing and distribution presence.
Risk	Risk is less than IJV	Risks sharing
Costs	Lower cost	Higher cost
Knowledge sharing	Partners must share skills and know-how. It will be critical if the business is secret.	Allow company to gain new technologies and knowledge
Management imperative	Remaining in control of your own company (Independent organization)	Use its own direction with the guidance of its board
Start /End up SA or IJV	Step out of Strategic Alliance quickly	Take more time to start and end up the International Joint Venture

**Table 1:** Comparison between Strategic Alliance and International Joint Venture

## **1.6 Doing Business in Oman**

In this study, the author focuses “expansion business through joint venture in Oman” therefore importance information shall be provided as following. (PKF & RSM., 2011), (Stephens, M., 2015).

### **1.6.1 Country profile**

As known that Oman is the second largest country in the Arabian Peninsula. It has over 309,500 square kilometers. It has mountain ranges, deserts and fertile plains. It is close to Republic of Yemen and Saudi Arabia to the west and the United Arab Emirates to the north. The east of Oman is adjacent to the Arabian sea. Oman has oil

and modern infrastructure, good roads as linked Oman to United Arab Emirates, airports (at Muscat international airport and Salalah Airport), sea ports (Mina Sultan Qaboos at Muscat, Mina Raysut at Salalah and Port of Sohar at Sohar) and good in building for telecommunication which is suitable for doing a business. Government also supports because Oman has a vision to develop its country by accepting foreigner investments to invest in Oman as population of Oman is about 4.7 million @ March 11, 2017 based on the latest United Nations estimates. (World Population Prospects., 2015). The climate is hot, summer temperature can reach to 130 degrees F or 54 degrees C. The official language is Arabic. English is used for all written and communication in businesses.

Oman's exports are oil and gas and its imports are consumer products, computer hardware/software, textiles and foods etc.

#### **1.6.2 Oman Commercial Laws and Business Structures**

All businesses need to register to be a member of the ministry of Commerce & Industry and also follow the Oman commercial laws which relate to each business.

100% foreign ownership in an Omani company, the capital of the company should not be less than OMR 500,000/- (\$1,285,714) If the ownership shareholders are foreigner and Omani partner, the capital of the company should not be less than OMR 150,000/- (\$385,714) and the capital of the company from non-Omani partner is not allowed to exceed 70%. However, the 100% foreign ownership may be allowed by the Ministry of Commerce and Industry.

Business structures in Oman can be registered as following:

- Sole Proprietorship
- General Partnership
- Limited Partnership
- Limited Liability Company (LLC)
- Joint Stock Company
- Joint Venture
- Branch Office of a Foreign Company
- Holding Company
- Representative Office of a Foreign Company
- Commercial Agent

The author focuses about business structure for business expansion as joint venture and limited liability company. Because they are related to this study.

Joint Venture is a commercial company formed by two or more companies, no separate legal personality/entity of this own. Joint venture must have a contract to define an objective, terms and conditions between all parties. New name of joint venture should not similar to others.

Limited Liability Company can be formed by two or more persons and liability is limited to the nominal value of the shares in the capital of the company. The number of the shareholder shall not exceed 40. The minimum capital investment is OMR 20,000/- (\$52,429) if no foreign is involved. However, if the foreign shareholder is involved, the minimum capital is OMR 150,000/- (\$385,714) (PKF & RSM., 2011), (Stephens, M., 2015)

### **1.6.3 Financial Reporting and Auditing**

The Omani Commercial Law requires all businesses to maintain the Books of Account as following at minimum:

- A dairy record of activities related to the commercial enterprise and a monthly record of personal withdrawals (for proprietorships and partnerships).
- A stock book inventory listing to show quantity and value, once a year.

### **1.6.4 Corporate Taxation**

Commercial company needs to pay income tax in Oman, personal tax is not required. Corporate tax rates are stated as following:

- |  |               |
|--|---------------|
| •Assessed income up to OMR 30,000/- (\$77,143) | Tax free      |
| •Assessed income over OMR 30,000/- (\$77,143)  | Flat rate 12% |

### **1.6.5 Labor Laws (mainly for expatriate staff)**

- Working hours are 48 hours per week.
- Overtime salary will be at 1.5 to 2 times.
- The employer has to pay end of service benefits which is the benefit of foreign employees or expatriate staffs. It is calculated on employee's final salary. For the first three years of employment, the equivalent of 15 days' basic pay for each year worked and for each subsequence year of employment, the equivalent of one month's basic pay.

• Fifteen days are leave salary as annual leave and can increase to thirty days for every year of service completion.

- The vocational levy is paid OMR 100/- (\$257) annually for each expatriate employee by the employer for training Omani to gain skills from expatriates in the workforce.

### **1.6.6 Free Zones**

Free zones in Oman are provided for foreign or local investment to develop the country.

- Salalah Free Zone – The first free trade zone in Salalah since 2005, can access to the Gulf Region, Red Sea, Indian Ocean, Yemen and East Africa. This area is provided 50 years lease and allowed investors for a blend industrial, manufacturing, logistics, retail outlets etc.

- Sohar Free Zone – It is located just outside the Strait of Hormuz. The zone is integrated with infrastructure zone such as the Port of Sohar, Sohar Airport and a planned rail line.

- Duqm Free Trade Zone – It is located at the east coast of Oman, near the international future of Al Duqm Airport and a crude export terminal with a refinery. This area is provided for sea port, industrial area, new town, fishing harbor, tourist zone and special economic zone etc.

- Al Mazyouna Free Zone – It is located in the Dhofar region in the South of Oman close to Yemen border. Investors are permitted to access without visa between Oman and Yemen.

- Knowledge Oasis Muscat (KOM) – It is located at Rusayl, 30 kms from Muscat, this is a technology area, international call center, research and duty free access to Gulf Corporation Council (GCC) states.

### **1.7 Risks of Joins Ventures**

TC company selects OC company to be its partner for business expansion in Oman. This is also the first step of TC company to work with other team outside Thailand. Though both companies agree to have the same goals of business and the attractive benefit to perform joint venture is sharing risks. However, during operating risks of joint venture might occur and an expectation risks might happen. The summary lists of them may be:

- Omani people which is included in Arab culture and classified as High context culture. (Al-Omari, J. ,2008). TC company must take time and put more effort to build the good relationship.

- Omani partner might have different objectives later after performing international joint venture. They might need to look for Knowledge Management, Channels for contacting of well-known consultants in the world such as McKinsey, MMI, TrippleE, and Best Practices or even TC company's prototypes (Package, Services, Tools). Because TC company does not have any assets, the value of TC company is mostly skills of consultants and knowledge for engineering improvement and management in refineries and petrochemical plants.

- The investment between two companies might be a problem in the future. As right now TC company does not have a lot of investment capital compared to OC company. TC company transferred all measuring values of knowledge prototypes, intellectual patents and systematic operation including some importance databases to be investment capital.

- TC company aware of that Oman is a country which used Western people rather than Asia people to work with and they believe in Western people. This might be obstacle to work with them in the early stage.

- Different cultures and different leadership & management styles might be obstacle even they try to build their own culture.

- Omani people might not believe in women. Half of TC company's consultant are women.

- Oman's law (Sharia Law) is a concern for assignees of TC company from Thailand. The training guidelines need to be provide before relocation to work in Oman.

### **1.8 Advantages and Disadvantage of Joint Ventures**

This is a perfect matching of joint venture between TC and OC companies as they are different competencies as described earlier. In addition, this is a new business for new location or new market in Oman. Portfolio of joint venture is different from parent company. Full analysis for advantages and disadvantages of joint venture to the destination country partner which is Oman can be listed.

The advantages of joint venture.

- As joint venture is a fast track strategy for business expansion. Therefore, new international joint venture business will help both parent companies to expand their business. Partnering with another company will help to enter to the new market and

more quickly rather than entering by itself. It will save money for marketing and advertisement for business.

- Company can gain new capacity or business expansion and increase expertise. Then more revenues and profits shall increase.

- Increase channel distribution in Oman country as Omani partner will help the joint venture to be a well know company in Oman.

- Increase more resources and more specialist staff sharing or pool resources.

- Sharing technology and knowledge leading to cost saving of the company

- Sharing risks and cost with a partner

The disadvantage of joint venture.

- Different cultures and management styles leading to failure of the joint venture organization. It seems that Omanis women did not get respect to be a leader. They normally work at home. For new joint venture company will not follow this way because men and women are equal and have rights to work at the company.

- The partner provides poor integration, poor collaboration and poor coordination leading to failure of the joint venture organization.

- Imbalance of expertise and also investment capital between partners. It is more disadvantages as TC company has more connections with experts and partners including experience consultants who were a background working in engineering firm and in refinery plant in Thailand. But for OC company, they have only operation skills in refinery. They work as owner roles for day to day basis and did not have a chance to work as project roles. It is a different way and take time to bring them in working as project role because timeframe, budget and scope will be important things to be aware.

- The impact of local law which is different local law from another country. It is the Sharia law for Muslim people. It might not affect to others. This is just made a list for a reminder.

## **CHAPTER 2**

### **INTERNATIONAL JOINT VENTURE FORMATION**

#### **2.1 Forms of International Joint Ventures**

The international joint venture agreement is the core document between the parties as mutually agreed benefit to execute the business together. This document will be depended on the objectives of the business type and requirements of all parties. It typically describes a shareholder capital which means companies involved, objectives of the joint venture, personal, day to day management work, physical equipment, facilities or intellectual property such as know-how or patents. In addition, if the party needs to cancel the joint venture formation because of limitation of resources or capital investment. Or even some party will be terminated from other parties. Therefore, the point of termination shall be addressed also. (Baker & McKenzie., 2015).

##### **2.1.1 Share of management**

Management and operation of joint venture must be changed comparing to their parent company. How do we know the management style, the daily operation and decision-making processes of new international joint venture organization? With regard to this joint venture management, they are grouped into four types. (Killing, P., 2012)

- Dominant parent ventures

Management decision-markings are dominated from one parent venture without any involvement from the other parties.

- Shared management ventures

Management of joint ventures are shared from all parties. It seems that this type is the most expectation of joint ventures management. They can negotiate and make agreement for decision-marking between the partners.

- Independent ventures

Manager from joint ventures might be given to manage or make a great deal if he/she can see fit. It seems that all tasks as assigned manager will make a deal, assigned manager must have experiences and can integrate all concerns to predict the outcome.

- Split-control venture

Management from joint ventures can separate for working group, for example, one venture will take care marketing and the other party will take care about operation.

### **2.1.2 Legal form**

It can be separated to three types of legal forms.

- Consortium

A mixing groups of partners, formed on a project basis. There is a contractual agreement which is indicated objectives, roles and responsibility clearly for each partner. Even though, they have a common goal to achieve but they will separate and do works as stated in contractual agreement and will be responsible only their works. Not have a common responsibility together.

- Partnership

It can be a form of partnership. There is a legal law to cover each of the parties. Each of partner is liable for any debt or committed by other partners. There is a contractual agreement also. However, it is different from consortium as there is a common responsibility together through all partners.

- Incorporation

Joint venture can be a permanent business which is constituted as an incorporated entity. As a limited company, the major disadvantage might be profit and loss. Because joint ventures as an incorporation cannot be set deduction for tax purpose from the parent companies.

### **2.1.3 Operation structure**

There are two categories of operation structure of a joint venture.

- Integrated structure

All parties agree for all level of execution process of the joint venture operation. They also agree for resources investment and capital investment of joint venture business.

- Non-integrated structure

Joint ventures business will be separated into packages or portions and each of them might assign manager form partners to be responsible on those tasks or execute and operate to get them done.

From analysis of my study, the international joint venture between TC and OC companies shall use share management ventures as they have different experiences for the different things. All concerns of business need share management to execute the business venture. Apart of management type, the type of business as they decide on will affect the tax of the business, running operation and also liabilities which are very important things of starting new business. Below is a brief summary different between partnership and corporation. (Kunz, M., n.d.)

	Partnership	Corporation
Structure	Two or more individuals share Ownerships	More complex, more people involving making decision
Start-up cost	Less costly, simpler to form	More expensive, complicate
Liability	Hold liable for all company debts and legal responsibilities (Partner's assets might pay company's debt)	Not hold individuals liable for the company's debt
Taxation	Not pay tax, profit and loss will pass through to parent company	Require to pay tax
Management	Similar to corporation	More shareholder involved

From continuing analysis, they should be a partnership, not a consortium and shall be an incorporation because international joint venture needs a contractual agreement which is a legal contract. They also concern on profit and loss and not hold the liability of the company as well.

Lastly, the author agrees for operation structure should be integrated structure as TC and OC companies concern the capital and resources investments.

## 2.2 The International Joint Ventures Agreement

The International Joint Venture Agreement is the main important document to execute and control the performing joint venture for the business between TC and OC companies. This agreement shall include common objectives, shareholder agreement,

policies agreement, termination of the contract etc. However, typical summary checklists for the International Joint Venture (Baker & McKenzie., 2015) as following:

### **1) Preliminary matters**

- The party to the joint venture is a company in Oman. OC company is a parent company to produce goods which are oil products and raw materials for petroleum products by itself.

- The party wants a principal term (term sheet or letter of intent)

- All confidential information shall be addressed that it should be included or excluded during negotiation and agreement.

### **2) Relationship between the parties**

- The commercial objectives of the International Joint Venture between TC and OC are supply agreement for goods and services (mostly for services, goods might be for some software) and a research & development for corporation agreement.

### **3) Business of the joint venture**

- Business plan shall be prepared and addressed activities to carry out the business.

### **4) Financing**

- The investment of party might be cash or assets. If cash, it might be from loans or equity. Cash must be specified in details.

### **5) Contribution of assets**

- Assets from OC company will be contributed to joint venture or not because this new joint venture will be located in Oman. If so, these assets will be transferred to joint venture by lease/license. It is for fixed period or how long for the duration for assets.

### **6) Cross-border/local law issues**

- The international joint venture between TC and OC companies for this study shall consider all local law issues.

### **7) Merger Control and Competition Review**

- Will establishing the joint venture trigger any competition or antitrust laws. This is not applicable in the joint venture agreement of this study.

### **8) Structure of the joint venture**

- See part 2 International Joint Venture Formation

**9) Accounting**

- What accounting policies shall be provide for the joint venture?

**10) Share capital**

- How many shareholders?
- What is the currency of the share capital?

**11) Profit distribution**

- What profit policy shall be provided for the joint venture?

**12) Transfer of interests**

•The restrictions on transferring of interests in the joint venture. The limitation period shall be taken into account.

**13) Board of Directors/Management**

- How many directors will provide for the joint venture?
- What rights for TC or OC companies will be responsible?

**14) Shareholder meetings**

- What and where shareholders meeting be held? It depends to both parties.

**15) Minority protection**

•Will the minority shareholders be protected against majority decision on certain matters? This will not be a problem of the joint venture as there are only two shareholders and each of them are majority shareholders.

**16) Representations and warranties**

- What are representations and warranties as parties require?

**17) Restrictive covenants**

- See 19)

**18) Administration**

- The company location will be a registered office in Oman.
- Employ local staff, building utilities, contact person etc.

**19) Intellectual property**

•For the joint venture business, intellectual property is important. However, for the consulting business in this study, TC company has employees who carried on knowledge and skills for consultancy roles and only some tool packages which will be developed and signed license later. Tool packages need more time for further development. (TC company is running business only five years). Hence, TC company

will not worry about copying knowledge by partner and be a new competitor in the future. However, to prevent competition in the future, Non-Complete, Covenant document shall be provided. Example document as (Appendix 1)

#### **20) Employee issues**

- How will the employees from parent company transfer to the joint venture organization?

- Will the joint venture have its own employees?

#### **21) Land**

Not applicable for this study. Not have any assets to invest.

#### **22) Ancillary arrangements**

- Additional for supply experts for technical specific area including hiring them for project basis from outside Oman or Thailand.

- Provision of technical assistance, know-how or training.

#### **23) Deadlock**

- In case of the partner cannot agree on the issues during performing the joint venture business. How should be resolved? The main important thing need to be specified and listed.

#### **24) Termination**

- It will state about duration of joint venture, when will need to extend or terminate the joint venture.

The example of joint venture agreement as enclosed (Appendix 2) has more items than items discussion in Part 2.2. The discussed items in Part 2.2 are minimum requirements from well-known company consulting firm checklists, Baker and McKenzie.

## **CHAPTER 3**

### **BUSINESS MODEL**

This part will create new business model for international joint venture organization between TC and OC companies. A business model will use to include all activities that will define how an organization completes in the market place. Typically, a business model contains nine categories (Osterwalder, A., Pigneur, Y., 2010). They are Key Partners, Key Activities, Key Resources, Value Propositions, Customer Relationships, Customer Segments, Channels, Cost Structure and Revenue Streams. However, the author made an analysis in this study for business model and uses seven categories as following:

- Core Strategy (Key activities)
- Strategic Resources
- Partnership Network
- Customer Interface (Customer relationship and Customer Segments)
- Value Propositions
- Channels
- Financial Projection (Cost structure and Revenue Streams)

#### **3.1 Core Strategy**

##### **3.1.1 Mission statement**

- End to end solution to client for engineering consultancy.
- Continuing develop knowledge to support client

##### **3.1.2 Service / Product / market scope**

- Service – will be package services for tendering process, project development or even owner representative providing to client and consultancy roles for solving problems in the Omani refinery plant.

- Product – will be tools or programs as will be developed from the experiences project working with expert vendors or expert licensors.

- Market scope – will be market work type as an owner representative to perform feasibility and recommend owner or client in which project needs to go further for next phase, or client's project needs to be Hold for now (up to the situation of

client's country or world situation at that time) or even decline the project because the financial results of the project are not good enough to go further.

### **3.1.3 Basis for differentiation**

As market scope mentioned, this joint venture business will definitely recommend to clients that their projects can go or not go to next phase because of financial results. The author can say that this is a basis for differentiation as the other consultancy firms they can provide the results with pros and cons for many options but not selected best options for clients.

## **3.2 Strategic Resources**

### **•A firm's core competencies**

As explanation earlier, TC company's core competencies are consultancy roles for engineering in the refinery and petrochemical for process safety, integrated process unit in the plant, optimized process unit and project development. The other OC company's core competencies are operation excellence in the refinery and also off shore process. Therefore, both of two companies has different competencies. They can mix competencies. Joint venture organization will have different competencies if compared to parent companies. It means that joint venture can increase wide range of services. TC company intends to assign their staffs to work closely with Omani partner and OC company might assign their staffs to work with Thai consultant as well. The transferring knowledge between two companies will occur during pool resources.

### **•Strategic assets**

For consultancy roles, the design organization plan is to lease the office building in Oman. There is no a key asset for a business of joint venture between TC and OC companies. Therefore, there is not necessarily to be a set of strategic assets. The other businesses might have strategic assets as R&D research building for their companies or even a church for religious organization or truck terminal for a freight firm

## **3.3 Partnership Network**

### **•Suppliers**

TC company already had partnership management including supplier, contractor engineering companies, vendors package. This is the good way that the new joint venture organization can expand partnership network quickly, not necessary to

start from the zero. Also can add more suppliers for contacting with regard to operation such as crude supplier, catalyst supplier, chemical supplier, corrosion protection package supplier, water protection package supplier

**•Other key relationship**

Key relationship might be partnership in Oman. Because the core strategic is to provide consultancy services for Omani refinery then partnerships in Oman need to be set as they must know more religious and culture to work with Omani.

By the way, all current partnerships in Thailand need to be informed that new joint venture organization might have more projects in overseas especially in Oman. Then all fixed hourly rate might be changed and other expenditure might be added.

**3.4 Customer Interface**

**•Target customer**

Target customer for joint venture organization will focus for Omani people in Oman at starting of the business. But it is not only providing services for Omani people at their refinery. It will expand to client outside Oman. It might be in Saudi Arabia because it is the biggest producing oil in Arabian Peninsula.

**•Customer relationship**

The plan is to set “Free tool kits” for quick calculation and will provide them on website. When people find and open it in the internet then it will link automatically to the company website. Free tool kits will be some excel files for being using related to engineering works such as pipeline sizing, control valve sizing. The other plan is to set “Free consultation” for customers if their case can provide simple advices or suggest to use or replace for their design according to the international standards. These relationships will help company to get in touch with customers and make trust to them.

**•Value Propositions**

As we provide concept “End to End Solution” to customer or client. It will provide convenience time saving for them. They just only provide their problem from their plant to us. We will provide scope, activities, milestones for deliverables, contacting to partners (if any) and determine time frame starting the project till finish project. It seems that the said explanations are normal way as same as consultancy firm in the world. However, we will provide more service beyond the scope as we will help them to implement and provide training for them if possible.

### •Channels

Distribution channels in Oman will be conducted via Omani partner. This is the major one advantage performing joint venture with Omanis as they are local people and know well how to communicate with other customers. The author trusts this is the key activity for Omani partner.

### •Financial Projection

It is an international joint venture for consulting firm therefore starting a consulting firm can be cost effective as this business type will not invest in assets or expensive machines or equipment. Typically, it should be concerned about leasing office building and its facilities to be accessible for customers, also includes all bills for expenditure, business license and certification.

Budget and Expenditure (Profitable Venture, 2015-2017)

- The total fee for incorporating the new business in Oman : \$750
- The budget for liability insurance, permits and license : \$2,500
- The budget for leasing office building 6 months : \$40,000

(Including decorating the new office)

- The budget for equipment in the office : \$2,000

(Computers, printers, furniture, telephones, stationary etc.)

- The cost of launching the company website : \$600
- The budget for paying at least two employees for 12 months: \$25,000
- The cost for utilities bills at least 3 months : \$5,000
- Additional expenditure (Business card, Advertisement etc.): \$2,500
- Miscellaneous : \$1,000

From the feasibility study, the joint venture will need about \$80,000 to set up a standard consulting firm in Oman.

Sources of Income

The new joint venture company is going to generate income by offering services and knowledge excellence training for customers or clients as main services following:

- Technical training
- Performance enhancement and process integration
- Process safety management

- Operational Excellence
- Project management and management or change

#### Sales Forecast

Below is the sales projection for joint venture as Omani partner will offer:

- 1st year -: \$1,000,000
- 2nd year -: \$1,500,000
- 3rd year -: \$2,000,000

#### Projected financial income statement

This is different income statement from other business and this is services business, not have products for selling, also no inventory for products and raw materials, no warehouse cost and no supply chain cost regarding delivery shipment. However, there are main expenditure for experts or consultants from other countries to be contacted to work in Oman. Additional cost will be cost for hotel, transportation, visa, foods and air ticket etc. for consultants and experts.

#### Calculating Gross Profit and Net Profit

As assumed that Omani partner will generate projected sales at the first year to joint venture, it is \$1,000,000. The example table below is to calculate gross profit and net profit.

- Gross profit = Sales – Cost of Sales
- Gross profit = \$1,000,000-\$482,400
- Gross profit = \$517,600
- Net profit = Gross profit- Total expenses
- Net profit = \$517,600- \$205,000
- Net profit = \$312,600

Income Statement for Services Company		(1) First year
<b>(2) Sales for the year</b>		\$ 1,000,000.00
<b>(3) Cost of Sales</b>		
Consultants	\$ 336,000.00	
Hotel	\$ 54,000.00	
Rental Car	\$ 14,400.00	
Food	\$ 18,000.00	
Plane Tickets	\$ 60,000.00	
<b>(4) Total Cost of Sales</b>		\$ 482,400.00
<b>(5) Gross Profit</b>		\$ 517,600.00
<b>(6) Expenses</b>		
Marketing and advertising	\$ 3,500.00	
Sales team	\$ 144,000.00	
Insurance	\$ 6,000.00	
Office rent	\$ 9,000.00	
Electricity	\$ 6,000.00	
Administration	\$ 36,000.00	
Office equipment	\$ 500.00	
<b>(7) Total Expenses</b>		\$ 205,000.00
<b>(8) Net Profit</b>		\$ 312,600.00

**Table 2:** Shows the Sample Excel Sheet Income Statement for Service Business  
(Driveyoursuccess, 2012)

### 3.5 Marketing and Sale

The joint venture company will be established in Oman. The Omani partner will be assigned to conduct marketing and sales as they are local and know well about main customer or client including channel distribution. The strategic of marketing and sale will start to attract customer in Oman first and then will continue to Saudi Arabia later.

### 3.6 Pricing Model

Strategic for pricing model with competitor companies in Oman means understanding the competitive price there and plan to attract customer target group by providing cost structure how much TC company wants to earn from them.

From the Salary Survey in Oman in Oil / Gas / Energy / Mining (SaralyExplorer, n.d.) which are the businesses related to the joint venture business in this study.

Average and Medium monthly salary comparison in Oman (in Oil/ Gas/ Energy/ Mining) as listed:

Maximum: 10,000 OMR (\$ 25,714)

Medium: 2,900 OMR (\$7,457)

Average: 2,876 OMR (\$7,395)

By using the maximum average per month which is \$25,714. This basis is reasonable as consultant salary is normally higher than engineer salary. Especially consultant for improving refinery plant or petrochemical plant. The hourly rate is higher than consultant for other business.

Therefore,

hourly rate of consultant in Oman will be =  $\$25,714/160 = \$161$

However,

hourly rate of TC company's consultant in Thailand is about = 3,500 Baht

Add up contingency 40% = 4,900Baht

hourly rate of the joint venture's consultant in Oman will be =  $4,900\text{Baht}/35 = \$140$

From the basis of pricing model, the suggested hourly rate of the joint venture company is competitive rather than in Oman.

Notes.

1. Contingency 40% included up-lift allowance, housing allowance, per-diem of consultant etc. They are included in consultant's hourly rate for selling to customer.

Please noted that cost structure of hourly rate already added up cost of support functions in the company.

2. Basis: 1 OMR is about 90 Baht
3. Basis: 1\$ is about 35 Baht
4. Basis: 1 month is about 160 working hours



# **CHAPTER 4**

## **INTERNATIONAL JOINT VENTURE MANAGEMENT AND IMPLEMENTATION**

### **4.1 Cross Cultural Management**

#### **4.1.1 Thai culture & Omani Culture**

As know that Thai culture is different from Omani culture. If both of them will work together. It might be an issue. This topic will specify normal working style for Thai and Omani cultures.

Thai culture:

- Thais respect hierarchy relationships. Older people are more important in the working location than younger people.
- Family life is more closure than western people.
- Thais did not say about their problems in an advance until they are worse.
- Thais lack of brave to be a leader.
- Thais work hard, not talkative when they work with expats because they are not good in speaking English.

Omani culture:

- Omanis focus on work life balance, prefer to start work late and break for a long time even though in big companies. Very relax people.
- Omanis need to build trust and relationship before being familiar with them.
- Ramadan affects working daily life for a month even you are not a Muslim (no drinks, no food for some place)
- Omanis, they are not good in customer service.
- Tax free lifestyle

#### **4.1.2 Cross cultural management**

Working with different cultures will lead to problem issues by accidents or un expectation behaviors from each partner. Referring to Greet Hofstede's cultural dimensions (Hofstede's, G., 2011), Arab and Thailand's cultural dimensions can be summarized to four dimensions.

	Arab	Thailand
•Power Distance Index	80	64
•Uncertainly Avoidance Index	68	64
•Masculinity Index	52	34
•Individualism Index	38	20

The results of two countries are same direction but Arab (the representation of Omani people) has power distance index and uncertainly avoidance index which are dominant in this region. People will follow laws, rules and regulation and they control to reduce the amount of uncertainly, also inequalities and wealth have been allowed to grow in this country. Masculinity index in Arab is greater than Thailand, it means that women in Arab country are limited with rights. Women in Thailand have more rights and they work as same as men for many functions in the company or in the government. This is important culture dimension because Omani may not respect women from TC company if they will be a leader in the joint venture organization. The last one is individualism index. The two countries are collectivist society, especially Thailand, they are highly collectivist society, they belong to be “in group” that take care of them and they will provide loyalty for exchange.

Therefore, cross cultural management shall involve managing international joint venture work teams in ways that considering in difference cultures between Oman and Thailand. Management has to learn, modify or adapt the working environment and try not to have a conflict between cultures or disagreement between two cultures or different beliefs, values and practices.

#### **4.1.3 Conflict and problem issues**

Conflict and problem issues will definitely occur because they are different culture between Thais and Omanis. The author may describe these issues and will leading to the unsuccessful works and unsuccessful missions of the joint venture company.

•Omanis will not rush in work assignment both of management and operation levels because their culture is not rush for any situations including working style. It will lead to the problem and conflict issues because Thais will get the work assignment done as soon as possible. (referring to the TC company organization culture)

- Thais have service mind for customers or clients and may provide extra scope of work if it is not costly from the original cost package service. Because Thais believe that clients will be happy and come back to use our services again in the future, also Thais prefer Customers Satisfaction Index (CSI) score after completing services with them. The author is not sure about Omanis, they will agree with this extra service and will follow this culture which is different Omanis culture.

- Work life balance in Oman may involve problem issues during working together between Thais and Omanis. Omanis may not need more work assignment but the early stage of performing the joint venture, the company needs more contributions from all employees.

- The Omani government is very slow process. It will be obstacle for the business venture. Especially dealing with visas for experts who will come to work on some projects basis in Oman. Administration department needs to be involved in the early stage.

Conflict and problem issues may be more listed again after starting operation in Oman.

#### **4.1.4 Mitigation plan**

The mitigation plan may be set following the conflict and problem issues. The preliminary mitigation plan may be concluded as following:

- Provide clear objectives and clear activities including set the time line frame work for every tasks as will assign to both of Thais and Omanis staffs.

- Well communication and coordination all the times, if something is not right, talk to them not keep quiet.

- Always open mind for receiving suggestion from the staffs all levels.

- Plan the work in advance or in the early state if it needs to contact Omanis government and prepare plan B or plan C in case of plan A is not success.

- Arrange a meeting to capture the work progress every week.

- Closely monitor to them if the work assignment is very important but be aware that they will think management did not trust them.

- Make relationship with Omanis people as they will be familiar with Thais and it will be easy to collaborate work in the joint venture business.

## **4.2 Organization Structure**

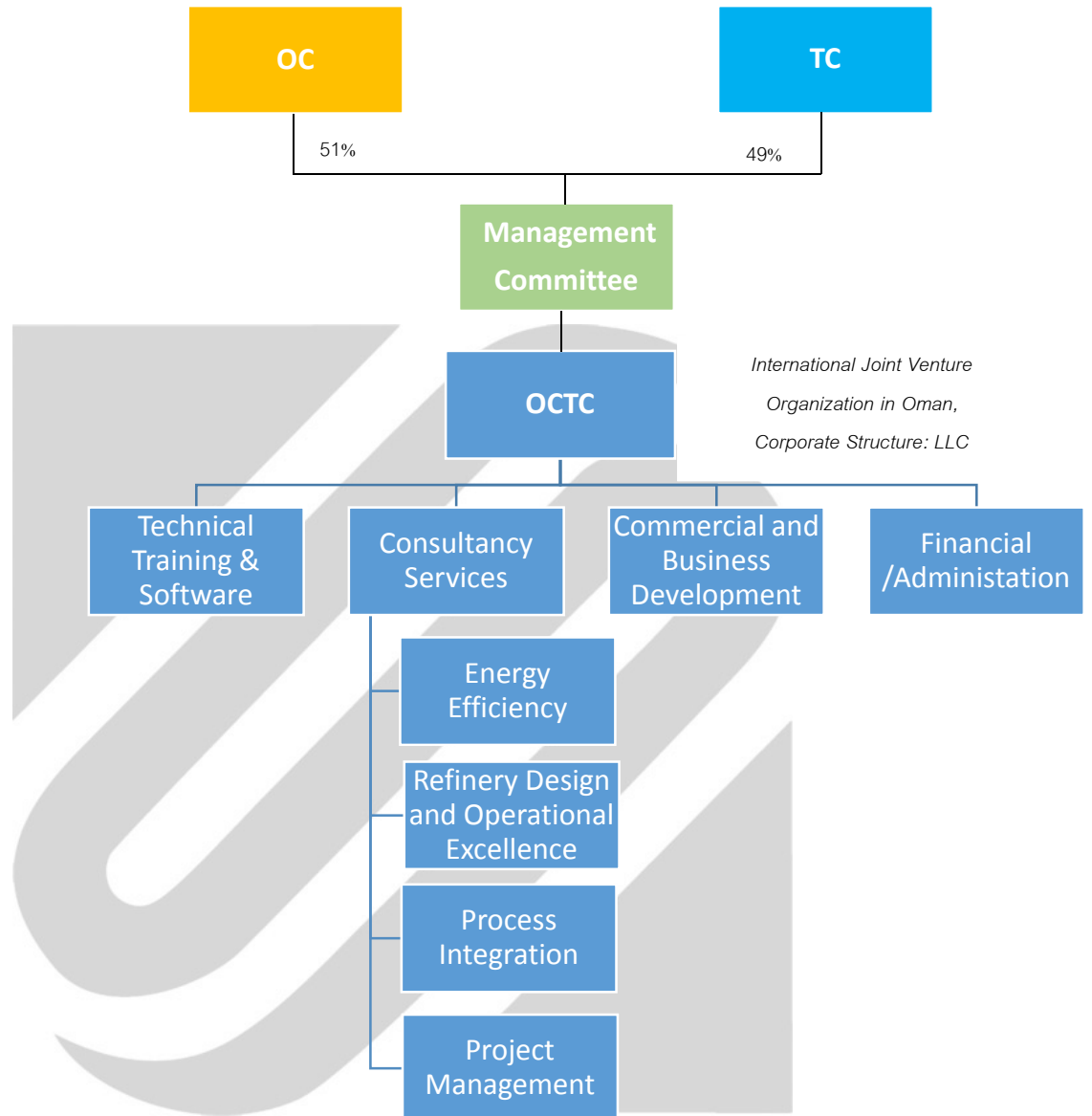
### **4.2.1 Management committee**

Management committees will be assigned from parent companies (TC and OC companies) via ratio 50:50 as shareholder will be normally equal but as the commercial law in Oman, the foreign investor is not more than 49%. (Royal Decree No. 102 / 94 relating to the Regulation of Foreign Capital Investment, Repealing Royal Decree No. 4 / 74, provides the general framework for foreign investment in Oman) Licenses to conduct business in Oman are granted to Omani entities whose share capital is not less than OR 150,000 and in which the foreign participation is not more than 49%. The percentage of foreign ownership may be increased in certain situations

### **4.2.2 International joint venture organization**

Management committees will set the new organization of joint venture and design business portfolio to be four divisions as following:

- Technical Training and Software
- Consultancy Services
- Commercial and Business Development
- Financial and Administration



**Figure 2:** Structure Management of International Joint Venture “OCTC” company

### **4.3 Staffs**

#### **4.3.1 Staff assignment**

Strategic for staff assignment is to transfer staffs working different location. They will learn how to work with local people in different location, skills and knowledge from them will be transferred during assignment. It is not only for adding skills for technical. However, this is the case that they can practice soft skills or leadership.

TC company has a plan for staff assignment to work in Oman immediately after joint venture agreement completion.

During staff assignment, TC company considers to keep them involving the evidence from parent company such as bi-monthly meeting, new year party, Corporate Social Responsibility (CSR) day because it shows that parent company still keeps in touch with them.

#### **4.3.2 Employee loyalty**

The way to ensure that assigned staffs working in Oman, they will be loyal to the parent company after returning from period of assignment. TC company realized and had a plan to attract them two categories as following:

- Career Path for them after returning to work at parent company
- Financial incentives such as stock options, pensions

Especially for the second option with regard to financial incentives, not only motivate them to stay with parent company but it seems that they will work hard for the company to get more profit.

#### **4.3.3 Supply chain issues for staffs.**

From analysis results according to potential supply chain issues. Supply chain issues may be occurred such as visa, work permit, transportation especially for air plane, flight and ticket. Most of them are for consultants who will travel from abroad to work in Oman for project basis. They are not only supply chain issues from Thailand, but in Oman and other countries as well because the joint venture company will contact many partners, external outsources and bring them to work in Oman.

## **CHAPTER 5**

### **SUMMARY AND CONCLUSION**

The final part starts up the theories of this study (part 1 – part 4) with summaries and concludes the findings of the study. In addition, set the frame work of the study and suggests the further research for the other sides of the study.

#### **5.1 Summary**

##### **Part 1- Feasibility Analysis**

The first part concentrated on Omani partner, analysis between Joint Ventures (IJV) and Strategic Alliances (SA), tools for strategic success which were SWOT, PEST and Porter's Five Forces. The results supported to open new business in Oman. It also had due diligence process and doing business in Oman guidelines providing for new joint venture. The business structure of joint venture in Oman shall be Limited Liability Company (LLC).

The study found that risks of joint venture should be aware if the objectives of them are not the same. They should ensure aims and objectives of the joint venture from time to time during performing joint venture. The author cannot say that the advantages and the disadvantages, which one is more influent than the other one. It must see the result when the joint venture operates the business.

##### **Part 2- International Joint Ventures Formation**

The study explained about forms of international joint venture. The results of IJV formation of this study were share management, incorporation and integrated operation structure. This part also concentrated on international joint venture agreement which was a very important document for the venture.

##### **Part 3- Business Model**

The business model as stated in this study for the IJV in Oman was mixed businesses from TC and OC companies' competencies which are consultancy roles and operational excellence. The strategic of the business will utilize employees from both companies. The channel distribution in Oman will be responsible by Omani partnership. This section also concentrated pricing model which used the data from some businesses in Oman.

#### **Part 4- International Joint Ventures Management and Implementation**

This part involved the culture dimensions between Thai and Omani. Their culture dimensions had the same trend but Thai people had lower score for all four dimension. The most importance is the Masculinity Index, which is limitation of women rights. It might be an obstacle during running the joint venture operation. It also focused on staff assignment how to secure them working in difference location to gain leadership knowledge and come back to work at parent company.

#### **5.2 Conclusion**

This study of business expansion through international joint venture, there are mechanism and situation to perform joint venture differently. Joint venture performing depends on parent company, value proposition in the market, marketing, business, partner including the location of the joint venture and its commercial laws. The corporate culture at the joint venture seems to be similar with the local organizational culture or parent companies. In addition, the location of the joint venture will affect corporate culture of the joint venture.

This study has given research how to perform the international joint venture, however this study was done by using some theories and company's experiences. Moreover, the study concerned about joint venture implementation and business operation sustainability. The control and trust of joint venture can be one interesting future research area to add more benefit for the study in the future.

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**APPENDICES**

**APPENDIX A:** A general example of Non-Complete, Covenant

**APPENDIX B:** A general example of Joint Venture Agreement

## APPENDIX A

### Non-Compete, Covenant

\_\_\_\_\_, referred to as SELLER and \_\_\_\_\_, referred to as BUYER, agree: BUYER and SELLER have entered into an agreement dated \_\_\_\_\_, 199\_\_ for \_\_\_\_\_.

In consideration of the mutual covenants and payments to be made pursuant to the agreement, and in further consideration of the sum of \$ \_\_\_\_\_ (\_\_\_\_\_ & \_\_\_/100 dollars) paid to by BUYER to SELLER, receipt of which is acknowledged by the SELLER, SELLER agrees not to compete with BUYER under the terms and conditions set forth herein.

During a period of \_\_\_\_\_ from the date of this agreement SELLER will not compete at any time, directly or indirectly with BUYER in the fields of:

\_\_\_\_\_

in the following geographic territory:

\_\_\_\_\_

For the purposes of this agreement "competition" shall be defined to include, but not be limited to, the following:

- (a) Participating as a director, stockholder, or partner of, or having any direct or indirect financial interest (including a financial interest as a creditor) in any enterprise engaged in the fields stated above;
- (b) Participating as an officer, employee, agent, representative, or consultant in, or rendering any services to, any such enterprise within the fields stated above;

SELLER further agrees that for a period extending \_\_\_\_\_ after the substantial consummation of the sale, SELLER shall not solicit for employment or employ any of the employees as of the date of substantial consummation of the same. However, in the event that BUYER terminates any employee, SELLER may employ that individual, provided that such employment is not limited by any valid non-competition agreement either assigned by SELLER to BUYER or entered into to between BUYER and the employee.

SELLER acknowledges that the restrictions contained herein are reasonable and necessary to protect the business and interest, which BUYER is acquiring pursuant to the above-referenced purchase and sale agreement. It is further agreed that BUYER would suffer irreparable injury if the restriction is not obeyed, and that injunctive relief is appropriate for any violation of the same.

Dated: \_\_\_\_\_

\_\_\_\_\_, SELLER

\_\_\_\_\_, BUYER

### Non-Compete, Covenant Review List

This review list is provided to inform you about this document in question and assist you in its preparation. This Non-Compete Covenant can be used with other documents to prevent competition. To preserve its legality and enforceability, it must be limited in terms of scope, geography, and time. In simple terms, you should draft it as narrowly as possible to improve the odds of its enforceability—and usefulness in settlement negotiations should such an occasion arise. Elsewhere in this disc more complex non-competes exist. This “covenant” is intended to be an “addition” to other agreements though it can easily stand on its own. Sometimes people desire to have this separate “covenant” so it can be prosecuted separately, if need be.

1. Make multiple copies. Keep one in the transaction file and another in the corporate file.

## **APPENDIX B**

### **JOINT VENTURE AGREEMENT**

#### TABLE OF CONTENTS

1. Definitions
2. Formation of JVC
3. Business of JVC
4. Share Capital
5. Transfer of Shares to third Parties
6. Board of Directors and Management of the COMPANY
7. Board Meetings and Shareholder's Meeting
8. Strategic Plans and Budgets
9. Dividends
10. Financial Year Auditors and Audit
11. Accounts, Records, Reports and Inspection
12. Confidentiality
13. Termination
14. Deadlock
15. Consequences of Termination
16. Damages
17. Force Majeure
18. Application law, Interpretation, Amendment & Supplementation of the Agreement
19. Settlement of Disputes
20. Communication
21. Miscellaneous
22. Assignment
23. Headings
24. Modifications
25. Waiver
26. Independent Parties
27. Representation and Authority
28. Counter Parts
29. Additional Documents
30. Entire Agreement

## 31. Conditions Precedent

**JOINT VENTURE AGREEMENT**

This Joint Venture Agreement(hereinafter referred to as "Agreement") made and entered into at .....this .....day of .....200--.

BY AND AMONG

SEIL ENGINE INT'L LIMITED, a company registered in ----- under the ---  
----- Offshore Business Activities Act 1992 and having its registered office at  
P.O. Box NO.----, -----(hereinafter referred to as "SEIL" which expression  
shall mean and include its successors and permitted assigns.),

GLOBAL POWERS LIMITED a company registered in ----- under the -----  
----- Offshore Business Activities Act 1992 and having its registered office at P.O.  
Box No.----, ----- (hereinafter referred to as "GPL" which expressions shall  
mean and include its successors and permitted assigns)

AND

TRADE INT'L CORP., a company duly existing and organized under the laws of Korea,  
having its principal office at -----  
-----, Korea(hereinafter referred to as "TIC" which expressions shall  
mean and include its successors and permitted assigns)

WITNESSETH :

WHEREAS, SEIL is a subsidiary company of Korea Engineering Co., Limited, a leading Korean company having proven capabilities in the engineering, design and construction on a turn-key basis of power plants, and possessing facilities for the manufacture of equipment and machinery for power plants.

WHEREAS, GPL is an established ----- company having experience in diesel power projects including overseeing operation, maintenance and repair of diesel power plants, overall plant supervision, providing procurement and plant construction assistance and financing structure assistance

WHEREAS, TIC is a company having experience in procurement and international trade of equipment machinery and raw materials etc. foreign investment and project financing.

SEIL, IPGL and TIC wish to form a Joint Venture Company (JVC) in ----- to jointly promote, own, operate and manage diesel power projects in -----.

SEIL, GPL and TIC have had discussions to finalize the terms and conditions of the participation of SEIL, GPL and TIC in the JVC, the manner in which the JVC will conduct business and its day to day management and operations and wish to record in writing the said terms and conditions mutually agreed upon by and among them and matters incidental and ancillary thereto.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, SEIL, GPL and TIC hereto agree as follows;

#### **ARTICLE 1. DEFINITIONS**

1. The terms stated below have the following respective meanings within this Agreement, unless the context results in a different meaning.
  - (a) "ACT" means the ----- Offshore Business Activities Act, 1992, as amended from time to time.
  - (b) "AFFILIATE" shall mean with respect to SEIL or IPGL or TIC, any entity (other than the JVC) which controls or is controlled by or is under the common control with SEIL or GPL or TIC respectively. An entity controls another when it owns or controls, directly or indirectly, more than fifty percent (50%) of the voting securities or voting interests of the said other entity or when it controls the composition of the board of directors of the said other entity.
  - (c) "BOARD" or "BOARD OF DIRECTORS" shall mean the board of Directors of the JVC.
  - (d) "MEMORANDUM AND ARTICLES OF ASSOCIATION" refers to the document agreed among the Parties to this Agreement which stipulates the objective, the organizational principles and the methods of internal management and administration for the JVC in accordance with the principles laid down in this Agreement
  - (e) "PERMITTED NOMINEE" means any "AFFILIATE" of a Party who has been permitted by that Party to acquire share in the JVC.
  - (f) "PARTY" and "PARTIES" shall mean SEIL, GPL and TIC individually and collectively as the context may require.

- (g) “JOINT VENTURE AGREEMENT” or “THIS AGREEMENT” shall mean this present Agreement and shall include any subsequent written modification and amendments thereto.
- (h) “JVC” means the Joint Venture Company to be jointly promoted by the PARTIES hereto in accordance with and as indicated in this Agreement.

## **ARTICLE 2. FORMATION OF THE JVC**

- 2.1 The JVC will be incorporated with the name of INTERNATIONAL POWER PROJECT INVESTMENT LIMITED or such other name as may be mutually agreed and approved by the regulatory authorities in ----- . The registered office of the JVC will be situated at such place as shall be mutually agreed.
- 2.2 The JVC will be a private company with liability by share in accordance with the laws of ----- . The liability of the shareholder in the JVC will be limited to their respective investments on this issued and paid-up capital.
- 2.3 The MEMORANDUM and ARTICLES OF ASSOCIATION of the JVC shall reflect the terms of this Agreement and be in such form as may be agreed among the PARTIES. It is agreed that as among the PARTIES this Agreement shall prevail and have an overriding effect, notwithstanding anything contained in the MEMORANDUM and ARTICLES OF ASSOCIATION of the JVC. In the event of any inconsistency between this Agreement and the MEMORANDUM and ARTICLES OF ASSOCIATION of the JVC, the PARTIES agree and confirm that this Agreement would prevail and that they would be bound by this Agreement and that they would forthwith take steps to amend the MEMORANDUM and ARTICLES OF ASSOCIATION of the JVC so as to remove such inconsistency.

## **ARTICLE 3. BUSINESS OF JVC**

### **3.1 JVC shall:**

- (a) carry on the business of promoting ,owning, operating, and maintaining power projects in India
- (b) operate efficiently and economically
- (c) attain maximum competitive position and strive for significant market share in India;
- (d) maximize profits and provide attractive return on investment to the Parties on an ongoing basis.

## **ARTICLE 4. SHARE CAPITAL**

- 4.1 JVC will initially have an authorised share capital of ----. million divided

into .....million Equity Share of ----.10(ten) each, which authorised share capital will be in stages increased to ----.....million or to such other amount as may be agreed among the PARTIES.

- 4.2 The initial issued, subscribed and paid-up share capital of the JVC will be ----. million divided into million Equity Share of ----.10 (ten) each. Such issued, subscribed and paid-up capital shall be subscribed for cash at par and paid-up and held by the PARTIES hereto as follows;-
- (a) 60% of the issued and paid-up equity share capital of the JVC shall be subscribed and held by SEIL/PERMITTED NOMINEES.
  - (b) ()% of the issued and paid-up equity share capital of the JVC shall be subscribed and held by GPL / PERMITTED NOMINEES.
  - (C) ( )% of the issued and paid-up equity share capital of the JVC shall be subscribed and held by TIC/PERMITTED NOMINEES.
- 4.3 The issued, subscribed and paid-up equity share capital may by mutual agreement be increased. Such further issue of shares shall be made to the PARTIES in the proportion referred to in Clause 4.2 unless otherwise agreed in writing by the PARTIES. In the event a PARTY does not wish to subscribe to such further issue of share of JVC offered to it and required to finance the ongoing operation of the JVC's business, then the remaining PARTY shall have the right to take up such of the shares refused to be taken up by the first PARTY and the first PARTY shall have its holding in the equity share capital of JVC diluted accordingly.
- 4.4 In the event of PARTIES' mutual agreement to change the pattern of holding of the equity share capital of JVC to enable JVC to offer shares to public or any other strategic investor, the respective shareholding of the PARTIES shall be changed in such proportion as the PARTIES may decide so however that the holding of GPL shall be not less than 29.55% and that of SEIL shall be not less than 29.55% of the paid-up equity capital of JVC and that of TIC shall be not less than ( )% of the paid-up equity capital of JVC. Such change in the shareholding pattern may be effected only on the terms and conditions which may be mutually agreed in writing among the PARTIES.

#### **ARTICLE 5. TRANSFER OF SHARES TO THIRD PARTIES**

- 5.1 Any PARTY or PARTIES/ PERMITTED NOMINEES (Selling Shareholder) shall not be entitled to transfer /sell any of the shares held by it/them in JVC except in accordance with the provisions of this clause;
- (a) If any PARTY or its respective PERMITTED NOMINEES (hereinafter referred to as "Offeror") desire to transfer any or all of its / their shares in

JVC to any person or equity, it shall offer such shares in writing in the first instance to the other PARTIES hereto (hereinafter referred to as "Offeree"). The Offeree shall be entitled to purchase the shares so offered or nominate any person or entity of its choice to accept the shares offered. Such Nominee shall be approved by the other PARTIES hereto, provided that such approval shall not be unreasonably withheld. Sale and purchase of such shares shall be at a Fair Price as defined hereinafter.

The Offeree shall be entitled to accept or reject such offer within a period of 90(ninety) days from the date of receipt of the offer or within a period of 30 (thirty) days from the date of fixation of Fair Price, whichever is later. If the Offeree or its nominees do not convey its / their acceptance in writing to the Offeror within such period, the offer shall be deemed to have been rejected by the Offeree.

Only if such offer is first rejected or is deemed to have been rejected by the Offeree, the Offeror shall be entitled to sell the shares to any third party or equity at the Fair Price or at a price higher than the Fair Price(hereinafter referred to as the "Opportunity Price"), provided, however, that once the Offeror identifies such third party the Offeror shall forthwith disclose to the other party the name of the third party and the Opportunity Price at which the shares are proposed to be transferred.

Upon such notification by the Offeror, the Offeree once again shall have the option to either purchase the said shares from the Offeror at the Opportunity Price or allow the Offeror to sell the said shares to the said third party at the Opportunity Price; such option shall be exercised by the Offeree within 10 (ten) days of such notification.

Such right of the Offeror to sell the shares to any third party shall be exercised within a period of 60(sixty) days from the date when such offer is deemed to have been rejected.

The Offeree / its nominees shall have a right of first refusal as aforesaid only if it and / or its nominees agree to purchase all the shares offered by the Offeror.

- (b) Notwithstanding anything herein contained where a PARTY exercises its right to sell the shares to any third party consequent to the other PARTIES rejecting the second offer or such second offer being deemed to have been rejected as outlined in Clause (a) above, the exercise of such right will be subject to;
  - (i) the third party being acceptable to the other PARTIES
  - (ii) such third party agreeing in writing as a condition precedent to the transfer of share to it to be bound by the terms and conditions of this Agreement as though it was a signatory to this Agreement

- (c) Notwithstanding anything herein contained, should any PARTY /its PERMITTED NOMINEES accept the offer to purchase of the other PARTIES/its PERMITTED NOMINEE shares but be prevented from acquiring such shares by virtue of any Government restrictions or refusal of approval, the first PARTY/its PERMITTED NOMINEES shall have a right to nominate any party who is free to acquire such shares, and agree to abide by this Agreement, provided however that the other PARTIES to this Agreement has been consulted in this regard.
  - (d) Notwithstanding any transfer, acquisitions of shares as contemplated in clauses (a) above, the PARTIES shall at all times be responsible and liable to discharge all their obligations to JVC and to each other so long as they are the shareholders in JVC.
  - (e) Nothing contained in clause (a) above shall apply to transfer of shares by the PARTIES(hereinafter referred to as “Transferor”) to its PERMITTED NOMINEES (hereinafter referred to as ”Transferee”), provided that such nominee agrees in writing as a condition precedent to the transfer to be bound by the terms and conditions of this Agreement as though it was a signatory to this Agreement and undertakes to re-transfer the shares to the Transferor in the event that the Transferee ceases to be the PERMITTED NOMINEE of the Transferor. Each of the PERMITTED NOMINEES holding shares of JVC pursuant to this clause shall be deemed to be a PARTY to this Agreement as if originally named herein.
- 5.3** “Fair Price” means the price to be determined by mutual agreement of the PARTIES within a period of 15(fifteen) days from the date of the offer being communicated to the other PARTIES. In the event of an agreement not being reached, the PARTIES shall within a maximum period of 5 (five) days appoint their auditors/chartered accountants (of their choice) to value the shares independently and require such valuation to be made within a maximum period of 30 (thirty) days form the date of appointment. In the event of there being a difference in the two valuations of less than 10 (ten)% of the higher value than the Fair Price shall be the average of both the valuations. If the difference in both valuation is more than 10 (ten) % of the higher value than in that event the aforesaid auditors/chartered accountants of the PARTIES shall within a period of 10 (ten) days of the later valuation mutually appoint in independent internationally reputed firm of chartered accountants to be the final valuers of the shares. Such valuers shall determine the Fair Price as an independent valuers within a period of 30 (thirty)days of the appointment and such valuation shall be final and binding upon the PARTIES. The auditors/chartered accountants shall act as valuers and not as arbitrators. The valuation shall be made on the basis of JVC being a going concern and taking into account the historic results of a representative period and reasonable projections of the future.

**ARTICLE 6. BOARD OF DIRECTORS AND MANAGEMENT OF THE JVC****6.1**

- (a) The PARTIES shall be jointly responsible for the management of JVC
- (b) The Board of Directors of JVC(hereinafter referred to as “Board”) shall consist of ( ) directors of whom GPL shall be entitled to nominee/designate ( ) directors and SEIL shall be entitled to nominate/designate ( )directors (including the managing director) and TIC shall be entitled to nominate/designate ( ) directors. Any increase in the strength of the Board shall be in the same proportion.
- Such rights of representation on the Board shall be enjoyed by a PARTY as long as it holds equity shares in the capital of JVC. All directors except the managing director shall be liable for retirement by rotation.

- 6.2 For the purpose of implementing this Agreement, the PARTIES hereto agree and undertake that they shall, at all times, exercise their respective voting rights as shareholders in the JVC in such manner and shall ensure that their respective representatives on the Board of the JVC shall so vote at the Board and shall so act so as to ensure the proper implementation and observance of the terms and provisions contained in and in the spirit of this Agreement.

- 6.3 GPL or, as the case may, SEIL or TIC shall be entitled to recommend the appointment of alternate directors in the event that directors appointed or nominated or designated by GPL or, as the case may be, SEIL or TIC are unable to attend the meetings of the Board. The Board shall accept such recommendations and forthwith appoint these alternate directors in accordance with the Act.

The Board shall, if so required by a non-resident director, appoint a person who is already a director or an alternate director of the JVC to be appointed as an alternate director for another director(s), in which event, the alternate director(s) so appointed shall have additional vote(s).

- 6.4 A vacancy on the Board shall be filled in as follows;

- (a) In the case of a director who was nominated/designated for appointment by GPL vacating his office as a director, the person to be appointed to fill the vacancy shall be one nominated /designated by GPL.
- (b) In the case of a director who was nominated/designated for appointment by SEIL vacating his office as a director, the person to be appointed to fill the vacancy shall be one nominated /designated by SEIL.
- (c) In the case of a director who was nominated/designated for appointment by TIC vacating his office as a director, the person to be appointed to fill the vacancy shall be one nominated /designated by TIC.

- 6.5 In the event of appointment of additional directors any PARTY shall have the right to nominate such directors, subject to the provisions of Clause 6.1.
- 6.6 The cost of travel, lodging and boarding of the directors and other out of pocket expense incurred by them for attending the meetings of the Board shall be borne by the JVC.
- 6.7 Each director shall be paid such sitting fees for attending any meeting of the Board as may be decided by the Board within the limits in this respect prescribed by the Act.
- 6.8 Any director shall also be entitled to receive such remuneration for service performed by him for JVC as the Board may decide and be approved by the shareholders of the JVC.
- 6.9 (a) Subject to clause (b) below, as long as SEIL holds shares in the equity share capital of JVC, it shall have the right to appoint /nominate the chairman of the Board of JVC after due deliberations and extensive consultations with the GPL and TIC.
- (b) It is agreed and understood among the PARTIES that notwithstanding what is stated in Clause (a) above , the first chairman of the JVC shall be Mr. ...., who shall be entitled to continue to act as the chairman of the JVC, so long as SEIL or its PERMITTED NOMINEE is shareholder in the JVC.
- 6.10 SEIL shall have the right to appoint and nominate a managing director of JVC. The managing director shall be in charge of the day to day operations and management of JVC. The managing director shall be vested with substantial powers of management which he shall exercise subject to the overall superintendence, control and direction by the Board.
- The managing director shall have the full responsibility and authority to manage the affairs of JVC within the framework of the business plan, and subject to the power required to be exercised by the Board or the shareholders under this Agreement or the provisions of the Act.
- 6.11 The representation of the PARTIES on any committee or sub- committee of the Board shall be in the same proportion and be computed in the same manner as their representation on the Board,
- 6.12 All matters shall be decided by the Board of JVC by a simple majority of votes. Provided that, the Board or any committee thereof (whether at its meeting or by circular resolution) or any executive/employee of the JVC or any person/committee under the power delegated by the Board shall not take any decision/action on the following matters involving the JVC except with the majority of directors which majority shall comprise of at least one affirmative vote of a director nominated /designated by GPL and one affirmative vote of a director nominated /designated by SEIL and one affirmative vote of a director nominated / designated by TIC.
- (a) to alter the provisions of the MEMORANDUM and ARTICLES of Association of the JVC;

- (b) to issue and allot new shares, debentures or any detachable warrants or coupons or other instruments which enables the holder to obtain share in the JVC, transfer of shares and such other securities (which includes transfer of shares and such other securities amongst the PERMITTED NOMINEES and AFFILIATES as defined in Clause 1 of this Agreement);
- (c) to engage in any activities other than those envisaged in this Agreement;
- (d) to fix remuneration of the directors;
- (e) to adopt accounts and reports to be laid before the members in General Meeting and decision in accounting policies of the JVC;
- (f) to join any other company or to invest in any other company;
- (g) to grant loans and / or credits other than those provided for in the business plan or approved in the annual budget, to assume any liabilities, guarantees or commitments to third parties other than those approved in the business plan and in the annual budget;
- (h) to change the total number of directors on the Board.
- (i) to issue debt instruments and borrowings in excess of Rs. ....million and/or for a term of more than.....months;
- (j) to dispose of assets other than those covered in the approved annual budget or disposal of assets exceeding Rs.....million and purchase of assets of a value exceeding Rs.....million and write off loans exceeding Rs.....million.
- (k) to declare dividends and appropriation of profits.
- (l) to delegate authorities to any committee of directors, managing director, manager, secretary or any other principal officer of JVC;
- (m) to appoint and remove key first level executives of the JVC;
- (n) to approve the annual budgets including capital expenditures, strategic plans , investment plans , business development plans, financial statements and balance sheet or any deviation therefrom and to undertake expenditure beyond approved budget;
- (o) to offer guarantees to financial institutions / banks
- (p) appointment / removal of auditors;
- (q) acquire from or grant to third parties by license or otherwise patents, trademarks, technology or other intellectual /industrial property rights;
- (r) to enter into transactions between the JVC and any of the principal shareholders of the JVC or in the case of corporate principal shareholders, their holding company, subsidiary or AFFILIATES;
- (s) to grant loans to directors;
- (t) initiation of, or an agreement to settle, any dispute, obligation, arbitration or other proceeding with any other third party, whether as petitioner /plaintiff / or respondent /defendant in respect of matters having a substantial bearing on JVC's activities;

- (u) to consent to a director or his relative or partner or firm or private company holding an office or place or profit in the JVC;
  - (v) to make liability of any director or manager unlimited if so authorised by the ARTICLES OF ASSOCIATIONS
  - (w) to appoint selling or purchasing agents or distributors;
  - (x) to increase/dispose of any investment made in the equity shares of a company in India in the business of power projects;
  - (y) to decide on the matter of increasing /reducing the stake in a company referred to in (x) above.
- 6.13 Wherever legally necessary, exercise of the powers of the Board shall be subject to the approval/consent of the shareholders at a duly convened general meeting of the shareholders.
- 6.14 Any business which required approval of the general meeting of the shareholders by special resolution as per the law in force on the date of signing of this Agreement but might not require in future such special resolution as a result of change in law, then such business shall also be deemed to have been included in Clause 6. 12

#### **ARTICLE 7. BOARD MEETING AND SHAREHOLDERS' MEETING**

- 7.1 The quorum for a meeting of the Board shall be one-third of the total strength of the Board for the time being or three directors whichever is higher provided that, so long as GPL, SEIL and TIC are entitled to nominate / designate directors, the quorum for the Board Meetings or any meetings of committees thereof shall not be validly constituted unless at least one nominee director each of GPL, SEIL and TIC is present, unless such requirement is waived in writing by GPL, SEIL and TIC for the specific Board Meeting.
- (a) At least 15 clear days notice in writing along with agenda mentioning the matters to be discussed and proposed to be decided at the Board Meeting shall be given to all the directors, whether in India or outside, such notices shall be sent to the business address of each such director. All notices given shall be given to all the directors with a copy to the Parties hereto by fax or other electronic communication and confirmed in writing sent by international airmail
  - (b) No decision at the Board Meeting on any item shall be taken which was not mentioned in the agenda of the Board Meeting unless all the directors or their alternate agree in writing otherwise.
  - (c) Board Meetings may be convened at the shorter notice if all the directors of the JVC agree in writing.
- 7.3 The quorum for the general meeting of the the shareholders meeting shall be two persons present in person provided that, so long as GPL, SEIL and TIC are entitled to nominate /designate directors, the quorum for the general meeting of the shareholders shall not be validly constituted unless at least one

representative each of GPL, SEIL and TIC is present at least at such meeting, unless such requirement is waived in writing by GPL or SEIL or TIC, as the case may be, for the specific general meeting of the shareholders.

- 7.4 Where at a general meeting of the shareholders any business requires approval of the shareholders by way of a special resolution (including business which as per the law in force on the date of signing this Agreement requires approval by way of special resolution but might not require in future such special resolution as a result of change in law), such approval in order to be valid and binding on the JVC would have to be by way of unanimous consent of all the shareholders.

#### **ARTICLE 8. STRATEGIC PLANS AND BUDGETS**

- 8.1 The managing director shall in consultation with the senior management personal prepare a strategic plan for each succeeding 5 year term at least 3 months before the expiry of each current strategic plan. The strategic plan shall be required to be approved by the Board. If the managing director considers it appropriate he may prepare a separate or modified strategic plan for a 5 year period at any time during the period of subsistence of any strategic plan. Such separate or modified strategic plan shall if approved by the Board replaces any existing strategic plan.
- 8.2 The managing director shall within the framework of the strategic plan (as approved by the Board) submit annually at least 1 month before the beginning of each financial year of JVC, a proposed annual budget of JVC to the Board for such financial year. Such annual budget shall be required to be approved by the Board.

#### **ARTICLE 9. DIVIDENDS**

- 9.1 Subject to the provisions of the Act, and the MEMORANDUM AND ARTICLES OF ASSOCIATION of the JVC and having regard to the future business requirements of JVC and commercial prudence the JVC for each financial year will declare the maximum possible dividend. Subject to the limits as aforesaid, the Board may declare by way of interim dividend and / or recommend to the annual general meeting of the shareholders of JVC dividend payment as the Board may feel expedient.

#### **ARTICLE 10. FINANCIAL YEAR AUDITORS AND AUDIT**

##### 10.1 Financial Year

The Parties agree that the financial year of JVC will be April 1<sup>st</sup> to March 31<sup>st</sup>.

## 10.2 Auditors

The first auditor shall be appointed by the Board as being nominated by SEIL in consultation with GPL and TIC and the appointment of the auditors shall in subsequent years be made in accordance with the relevant provisions of the Act by the shareholders of JVC based on the proposal of SEIL after consultation with GPL and TIC.

## 10.3 Annual Audit

An annual audit of the books of accounts, records and affairs of JVC at JVC's expense shall be made each year immediately following the close of the financial year by JVC auditors. A signed copy of the report of the annual audit shall be submitted to each member of the Board.

# **ARTICLE 11. ACCOUNTS, RECORDS, REPORTS AND INSPECTION**

## 11.1 Maintenance of Records

JVC will maintain separate, independent, accurate, complete, clear and satisfactory financial accounts for its business operations and shall keep records confirming to sound international practice in accordance with Indian law requirements, which accounts shall be audited at the expense of JVC but its Auditors.

## 11.2 Monthly Financial Statements

The Parties shall ensure and cause JVC to deliver to the Parties monthly financial statements which shall include a profit and loss statement and a balance sheet not later than the fifteenth (15) work day after the end of each month.

## 11.3 Inspections of Records

The Parties shall ensure that all the books and records of JVC including contracts, undertakings and all other documents executed by JVC, its directors or officers shall be open to inspection by the Parties and their authorised representatives at all reasonable times.

## 11.4 Special Audit

The Parties will have the right at any time to have special audit made of the books of accounts, records and affairs of JVC but any special audit shall be at the expenses of the requesting Party, and if material discrepancies in any of JVC's accounts, records or affairs are discovered as a result of such audit, the expenses for such audit shall be paid for by JVC.

## 11.5 Access

Each Party through its nominated directors or representative shall at its own expenses be entitled to have:

- 11.5.1 reasonable access at all reasonable times to inspect and obtain copies of books, records and documents under the control of JVC.
- 11.5.2 reasonable access at all reasonable times to observe and inspect operations of JVC as would be allowed under applicable laws stated in Clause 18.1.

## **ARTICLE 12. CONFIDENTIALITY**

### 12.1 Confidentiality of the information

During the subsistence of this Agreement, each Party and/or its Affiliate(s) shall receive and maintain all Confidential Information (as defined hereafter, however disclosed) in the strictest confidence.

### 12.2 Limit to Disclose

Each Party and/or its Affiliate(s) shall limit disclosure of any Confidential Information to those of its employees, agents, and representatives on a need -to-know basis. Either Party prior to making disclosure of any Confidential Information shall exert best efforts to cause the receiving entity(ies) to execute papers and documents to effect substantial compliance with the provisions of this Clause.

### 12.3 Legal Obligation to Disclose

In case either Party and/or its Affiliate(s) or any of their employee, agents or representatives, becomes legally compelled to disclose any Confidential Information, such Party shall give sufficient notice to the other Party so as to permit such other Party to seek a timely protective order or other appropriate relief. If such order or order relief cannot be obtained, the Party being compelled to make disclosure shall only make disclosure of that which is legally required and no more.

### 12.4 Information in public domain.

The obligation of confidentiality in respect of Confidential Information shall not apply to Confidential Information which is now in, or hereafter comes into, the public domain otherwise than by breach of this Agreement.

### 12.5 Copies

Each Party and/or its Affiliate(s) shall make only such notes, sketches, drawings, photocopies or other written or photographic records relating to all Confidential

Information as are absolutely necessary. All such materials shall belong to the Party and/or its Affiliates to which the Confidential Information relates and, together with all other tangible expressions of Confidential Information held by any Party and/or its Affiliates(s) shall be returned to the owner forthwith upon the termination of this Agreement.

## 12.6 Confidential Information.

For the purpose of this clause, “Confidential Information shall mean

- 12.6.1 with respect to JVC, all information (verbal or documented) relating to the business or operations of JVC, which is specifically identified by JVC at the time of the disclosure as being confidential or proprietary; and
- 12.6.2 with respect to any Party, all information (verbal or documented) relating to the business or operations of such Party or any of its Affiliates which is specifically identified by such Party at the time of the disclosure as being confidential or proprietary.

The term “Confidential Information” shall specifically include any tangible expression of such information , including , without limitation, photographs, plans, drawings, renderings, journals, notebooks, computer programs, samples, models, prototypes and mock-ups relating thereto, and shall further include any confidential or proprietary information owned by any other person or entity and furnished by such other person or entity pursuant to an undertaking to maintain the same in confidence.

## 12.7 Exceptions

Notwithstanding anything contained in this Agreement to the contrary, the restrictions covered under this Agreement for the use or disclosure of Confidential Information shall not apply to any information.

- 12.7.1 which is independently developed by the receiving Party or any her Affiliate or lawfully received free of restriction from another source having the right to so furnish such information; or
- 12.7.2 after it has become generally available to the public without breach of this Agreement by the receiving Party or any Affiliate; or
- 12.7.3 which at the time of disclosure to the receiving Party was known to such Party or Affiliate free of restriction so long as such prior knowledge is promptly disclosed in writing following disclosure of the information; or

12.7.4 which the disclosing Party agrees in writing is free of such restrictions.

#### 12.8 Inurement

Notwithstanding anything contained in this Agreement, the provisions of Clause 12.1 shall continue to be applicable to and to bind the Parties, without limit in point in time except and until such information enters public domain or is covered under Clause 12.7.

#### 12.9 Continued Use

Notwithstanding anything to the contrary contained in this Clause 12, in the event of termination of this Agreement by reason of any breach by a Party, the other Party shall be entitled to continue to use Confidential Information for the purpose of the activities of the JVC and such use of Confidential Information shall not be deemed to be a breach of the confidentiality obligation contained in this Article 12.

### **ARTICLE 13. TERMINATION**

13.1 Notwithstanding anything contained in this Agreement, either Party shall be entitled to terminate this Agreement in any of the following events;

- (a) either Party shall have the right to terminate this Agreement by giving 15(fifteen) days written notice to the other Parties if that other Party or Parties voluntarily or otherwise commits a material breach of any of the terms and conditions of this Agreement , provided that if the breach is remediable , the right aforesaid shall be exercisable only if the breach is not remedied within 45 (forty-five) days of a written notice requiring to remedy the same;
- (b) either Party shall be entitled to terminate this Agreement forthwith by giving a written notice to the other Parties in the event of the other Party or Parties being ordered to be wound up or entering into a compromise or arrangement with its creditors as a result of its bankruptcy or if a distress execution or other process shall be effected upon or if an encumbrancer shall take possession of or a receiver shall be appointed of substantial part of the assets or property of the other Party or Parties.
- (c) upon one Party giving notice to the other Party or Parties consequent upon the other Party or Parties or its PERMITTED NOMINEES ceasing to be the shareholders in the JVC.
- (d) upon one Party giving notice to the other Party or Parties consequent upon a

change in the ownership or control of the other Party or Parties;

change of ownership or control in so far as a Party is concerned shall be deemed to be occurred if there is a change in the ownership of shares in the Party which has the result of operative control being directly or indirectly exercised by any other entity other than that which presently controls the said Party.

- (e) if the JVC's activities are seriously impeded as a result of force majeure for a period of more than 6 months as mentioned in Article 17 herein below.
- (f) if any one or more of the conditions precedent set forth in Article 31 have not been fully met within .....months from the date of this Agreement or such other extended date as may be mutually decided by the Parties.

13.2 During the period that the notice of termination is given by any Party until the time the issue is resolved or termination becomes effective the members of the Board shall function as trustees for the smooth and continued operations and functions of the JVC.

#### **ARTICLE 14. DEADLOCK**

14.1 The Parties and their respective PERMITTED NOMINEES expressly agree and confirm that in case of any major impasse / deadlock having arisen in the operation of the JVC which pertains and is material to the further or future operation of the business of JVC, the Parties shall cause their nominated directors to prepare and circulate to the other Party or Parties a memorandum or a statement setting out its position on the issue on which there is disagreement and its reasons for adopting such position. Each such memorandum or statement shall then be considered by the chairman of managing board of GPL, SEIL and TIC then holding office who shall use their best endeavours to resolve such an impasse / deadlock. Such process shall be completed within a period of 45 (forty-five) days of the impasse/deadlock having arisen, unless such period is extended by mutual agreement by three chairman. An impasses / deadlock arises on the date one Party receives a written communication from the other conveying the basis of such other Party coming to the conclusion of which the deadlock is and how it has arisen. Despite the aforesaid if the panel of the chairman is unable to resolve the impasse / deadlock, that the deadlock shall be deemed to be a major impasse / deadlock and in the event ultimate solution of any major impasses/deadlock shall be as provided hereinafter in this Clause. In the event any Party (hereinafter referred to as "Selling Party") desires to sell its shareholding in the JVC, the other Parties (hereinafter referred to as "Purchasing Parties") shall have the first right to inquire it including its PERMITTED NOMINEES to sell its shareholding to

themselves at a fair price which shall be determined in accordance with Clause 5.3 of this Agreement.

- 14.2 In case Purchasing Parties have notified Selling Party in writing that it or its PERMITTED NOMINEES do not wish to purchase the entire shareholding of Selling Party including its PERMITTED NOMINEES, in that event, Selling Party shall be entitled to sell all the share held by it/its PERMITTED NOMINEES to a third party at a price not less than the fair price referred to in Clause 14.1, provided that such a third party is acceptable to Purchasing Parties and agree in writing as a condition precedent to the transfer of share to it to be bound by the terms and conditions of this Agreement as though it was a signatory to this Agreement.
- 14.3 Once an impasses/ deadlock has deemed to have arisen till such time the impasses/ deadlock is resolved, the directors of the Board shall function as trustees for the smooth and continued operation and functioning of the JVC.

#### **ARTICLE 15. CONSEQUENCE OF TERMINATION**

- 15.1 It is expressly agreed by and among the Parties that in case of termination of this Agreement by any Party under Clause 13.1 <other than (e) and (f)>, SEIL shall have the right to require GPL including its PERMITTED NOMINEES to sell their entire shareholding in the JVC to SEIL and GPL/PERMITTED NOMINEES shall be obliged to sell their shares to SEIL at the price mutually agreed between the Parties failing which at the fair price determined in accordance with Clause 5.3.
- 15.2 In case Purchasing Parties has notified Selling Party in writing that they or their PERMITTED NOMINEES do not wish to purchase the entire shareholding of Selling Party including its PERMITTED NOMINEES, in that event, Selling Party shall be entitled to sell all the share held by it/its PERMITTED NOMINEES to a third party at a price not less than the fair price referred to in Clause 14.1, provided that such a third party is acceptable to Purchasing Parties and agrees in writing as a condition precedent to the transfer of shares to it to be bound by the terms and conditions of this Agreement as though it was a signatory to this Agreement.
- 15.3 No waiver of antecedent breach and no grant of time and indulgence shall prejudice any subsequent right to terminate this Agreement.
- 15.4 The termination shall not prejudice the right of non-defaulting Party or Parties against the defaulting Party that may have accrued prior to the date of termination or expiration of this Agreement.
- 15.5 On the termination of this Agreement the Parties hereto shall refrain from any

acts, indications, publicity or advertisements which may mislead any third party into the belief that the Parties hereto still maintain business relationships with one another with reference to the JVC and neither Party hereto shall commit any act detrimental to the business or reputation of the other Parties; also the Parties shall ensure that the JVC shall not use the name of the outgoing shareholder in any manner either in publicity material or otherwise.

- 15.6 When this Agreement is terminated due to the circumstances set out in sub Clause (f) of Clause 13.1, if the JVC is in existence, Purchasing Parties shall have the right to require Selling Party including its PERMITTED NOMINEES to sell their entire shareholding in the JVC to Purchasing Parties and Selling Party /PERMITTED NOMINEES shall be obliged to sell their shares to Purchasing Parties at a mutually agreed price failing which at the fair price which shall determined in accordance with Clause 5.3 of this Agreement.

In case Purchasing Parties has notified Selling Party in writing that they or their PERMITTED NOMINEES do not wish to purchase the entire shareholding of Selling Party including its PERMITTED NOMINEES, in the event, Selling Party shall be entitled to sell all the share held by it/its PERMITTED NOMINEES to a third party at a price not less than the fair price referred to in Clause 14.1, provided that such a third party is acceptable to Purchasing Parties and agree in writing as a condition precedent to the transfer of shares to it to be bound by the terms and conditions of this Agreement as though it was a signatory to this Agreement. Where this Agreement is terminated under the said sub Clause neither of the Parties shall be entitled to claim compensation from the other Parties for any damage which may be incurred.

#### **ARTICLE 16. DAMAGES**

- 16.1 In the event of breach of any obligation stipulated in this Agreement or the failure to duly fulfill an obligation in accordance with the provisions of this Agreement on the part of one of the Parties, the defaulting Party shall be obliged to compensate the non-defaulting Parties for the resultant damages incurred. Compensation for damages is to be paid in the currency of the United State Dollars.
- 16.2 The assertion of a claim for damages shall not affect the right to terminate this Agreement in accordance with Clause 13.1.

#### **ARTICLE 17. FORCE MAJEURE**

17.1 Each Party shall be released from the responsibility for the complete or partial non-fulfillment of an obligation arising from this Agreement, when such non-fulfillment results from an event of force majeure which occurs after signing of this Agreement and which the Party concerned could not have prevented by reasonable means.

17.2 Such events of force majeure shall include but are not limited to the following;

A ban on the export of products from a country or on importation into a country (embargo) , government decrees or orders issued by state bodies, including amendments to the imperative state economic plans, natural disasters, strikes, lockouts, riots, war, etc.

17.3 In the event of any one of the stated circumstances occurring, the Party affected shall promptly provide the other Parties with a written notification. This notification shall describe the events concerned and insofar as possible assess the effects of the events on fulfillment of the Party's obligations under this Agreement and state the estimated date of its ability to fulfill these obligations.

Upon requests of the other Parties, within a reasonable period the Party concerned shall forward a confirmation from the Chamber of Industry and Commerce in its country or from a comparable organization or any agency of government verifying that these circumstances do exist.

17.4 Upon cessation of the stated circumstances, the Party concerned shall promptly provide the other Parties with a written notification to this effect. This notification must specify a period within which the Party expects to fulfill its obligation under this Agreement affected by such force majeure.

Should the Party concerned culpably fail to send the necessary notification, or fail to forward them in good time, it shall be obliged to compensate the other Parties for the losses which are incurred as a result of the failure to send the notification or the delayed forwarding of the notifications.

17.5 In case of the event of force majeure occurring, fulfillment of the obligation of the Party concerned under this Agreement shall be postponed by the duration of these circumstances and their consequences. The Party shall, however, endeavor to expeditiously fulfill its obligations which were affected by such force majeure.

17.6 Should the circumstances of force majeure and their consequences continue for longer than 6 (six) months, thereby seriously impeding the JVC's activities , each Party shall be entitled to terminate this Agreement. In this case, neither of the Parties shall be entitled to claim compensation from the other Parties for any damage which may be incurred due to the force majeure.

**ARTICLE 18. APPLICABLE LAW, INTERPRETATION, AMENDMENT AND SUPPLEMENTATION OF THE AGREEMENT**

- 18.1 This Agreement shall in all respects be governed by and construed in accordance with the laws of -----.
- 18.2 In the event that any one or more of the provisions contained in this Agreement shall be invalid, illegal, unenforceable or incomplete in any respect under any applicable law, the validity, legality and enforceability of the reminding provisions contained herein shall not in any way be affected or impaired thereby. The vulnerable provision shall be replaced , amended or supplemented by such a provision which the Parties would have chosen so as to attain the intended economic objective of the Parties had they been aware of the vulnerability of the said provision.
- 18.3 Any amendments or supplements to this Agreement shall be effective and binding only when agreed among the Parties in writing and, where necessary , when the appurtenant licenses or registration certificates have been received from the state bodies.

**ARTICLE 19. SETTLEMENT OF DISPUTES**

- 19.1 The Parties shall endeavor to resolve by negotiation any difference of opinion and disputes which may arise from or in connection with this Agreement or with regard to the validity of this Agreement itself, in the course of operation of the JVC.
- 19.2 If it proves impossible to settle disputes within 30(thirty) days and legal proceedings appear unavoidable, such disputes are to be decided by a court or arbitration , without recourse to a general court of law.
- 19.3 The arbitration shall consist of three arbitrators. Each Party shall appoint one arbitrator. The chairman of the court of arbitration shall be decided by three arbitrators among themselves. In the event that arbitrators or chairman of the arbitration court shall not be appointed, this chairman or these arbitrators shall be appointed by the court of arbitration.
- 19.4 The arbitration proceedings shall be conducted in accordance with the Rules of International Chamber of Commerce.

19.5 The cost of arbitration shall be decided by the Rules stated in Clause 19.4; and the interpretation of this Agreement shall be in accordance with the Mauritius Law; the arbitration language shall be English.

#### **ARTICLE 20. COMMUNICATION TO THE PARTIES.**

Irrespective of whether this is expressly specified in each individual case, all communications which are necessary or permitted with regard to this Agreement and the JVC are to be affected in writing, i.e. via letter, telex or telegram. These communications are to be forwarded to the following addresses;

GPL.....  
SEIL.....  
TIC.....

Any change in the above addresses shall be communicated to other Parties in writing.

#### **ARTICLE 21. MISCELLANEOUS**

21.1 The official language of this Agreement is English.

21.2 All documents and other papers of importance which relate to the JVC shall be drawn up in English language and shall be binding upon the Parties. Correspondence among JVC and the Parties in the course of daily business shall be conducted in the English language.

21.3 Each Party shall bear its own costs incurred in the establishment, registration and organization of the JVC, including consultation fees. The JVC shall bear those costs which are directly related to its registration and organization and any consultation costs which directly concern the JVC.

#### **ARTICLE 22. ASSIGNMENT**

The rights and obligations under this Agreement are personal and shall not be assignable by any Party without the prior written consent of the other Parties which consent will not be unreasonably withheld. Notwithstanding anything to the contrary in this Agreement, any Party shall have the right to refuse permission to the other Parties or

Party to assign this Agreement to a third party, where the assignee is a competitor or is likely to be a competitor of the first Party or its AFFILIATES.

#### **ARTICLE 23. HEADINGS**

The headings of the sections of this Agreement have been inserted only to facilitate reference and shall not be taken as being of any significance whatsoever in the construction and interpretation thereof.

#### **ARTICLE 24. MODIFICATIONS**

This Agreement shall not be altered, modified or supplemented except with the prior written approval of the Parties hereto.

#### **ARTICLE 25. WAIVER**

The failure, with or without intent, of any Party to insist upon the performance (in strict conformity with the literal requirements) by the other Parties of any term or stipulation of this Agreement, shall not be treated or deemed to constitute a modification of any terms or stipulations of this Agreement.

Nor shall such failure or election be deemed to constitute a waiver of the right of the other Parties at any time whatsoever thereafter to insist upon performance by the other Parties strictly in accordance with any terms or provisions hereof.

All terms, conditions and obligations under this Agreement shall remain in full force and effect at all times during the substances of this Agreement except where otherwise amended or modified by them by mutual written agreement.

#### **ARTICLE 26. INDEPENDENT PARTIES**

The Parties shall act in all matter pertaining to this Agreement as independent parties and nothing contained herein shall constitute either as the agent or as the partner of the other Parties and does not give any Party the power to represent the other Parties hereto.

#### **ARTICLE 27. REPRESENTATIONS AND AUTHORITY**

- 27.(a) Each Party represents and warrants that it is permitted by its respective corporate charter and incorporating documents to enter into this Agreement, and is not restrained, prevented or inhibited by any contract or arrangement to which it is a Party from entering into this Agreement or undertaking the obligations herein contained.
- (b) Each signatory to this Agreement represents and warrants that he is duly authorised by the Party for and on whose behalf he is signing this Agreement to execute the same in a manner binding upon the said Party and that all corporate approvals and procedures necessary for vesting such authority in him have been duly obtained and complied with.

#### **ARTICLE 28. COUNTER PARTS**

This Agreement shall be executed simultaneously in two counter parts each of which shall be deemed to be an original but both together shall constitute one instrument.

#### **ARTICLE 29. ADDITIONAL DOCUMENTS**

Each Party hereto shall promptly execute and deliver such additional documents as are reasonably required by the other Party or Parties hereto for the purpose of implementing this Agreement, provided that such documents shall be consistent with the provisions hereof.

#### **ARTICLE 30. ENTIRE AGREEMENT**

This Agreement sets forth the entire agreement and understanding among the Parties as to the subject matter hereof and supersedes all communications, negotiations, commitments and writings prior to the date hereof pertaining to the subject matter of this Agreement.

#### **ARTICLE 31. CONDITIONS PRECEDENT**

31.1 This Agreement shall take effect only after all the following conditions precedent have been fully satisfied.

31.2 This Agreement has been executed by the Parties and the following approvals have been obtained;

- (1) has been approved by a formal Board resolutions of the Parties.
- (2) Approvals required for effecting investments by the Parties in the capital of the JVC.

- (3) Approvals required to enable the JVC to undertake activities contemplated by this Agreement.

Agreement

IN WITNESS HEREOF the Parties hereto have executed this Agreement on the day and year first hereinabove written.

SUPER ENGINE INT'L

GLOBAL POWER LIMITED

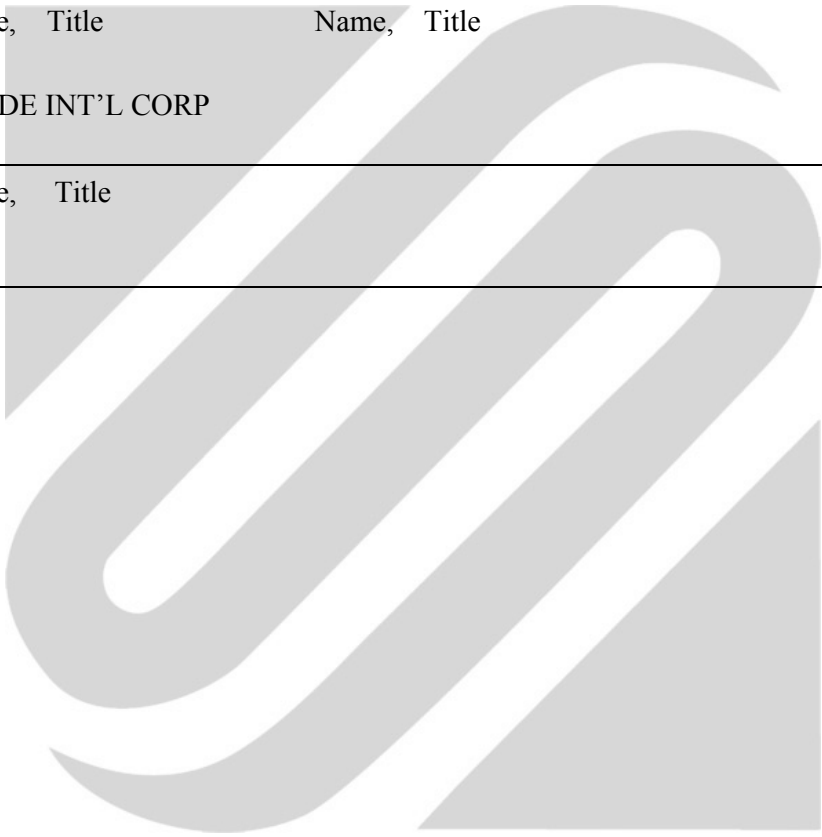
Name, Title

Name, Title

TRADE INT'L CORP

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Name, Title

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**BIOGRAPHY**

<b>NAME</b>	Siriyaporn Chongnimitwong
<b>BIRTHDAY</b>	N/A
<b>EDUCATION</b>	
<b>MASTER DEGREE</b>	Stamford International University (International Business Management)
<b>BACHELOR DEGREE</b>	Chulalongkorn University (Chemical Engineering)
<b>NATIONALITY</b>	Thai
<b>HOME ADDRESS</b>	Nonthaburi, Thailand
<b>EXPERIENCES</b>	Process design engineering, international engineering company
<b>CURRENT EMPLOYMENT</b>	A major oil company in Thailand
<b>CURRENT POSITION:</b>	Project Management
<b>EMAIL ADDRESS:</b>	iamaye1972@hotmail.com