
Drafting of a

Shareholders' Agreement (SHA) /

Joint Venture Agreement (JVA)

June 2025 Edition

Anil Chawla Law Associates LLP
Business Lawyers, Strategic Advisors and Insolvency Professionals

www.indialegalhelp.com

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Guide to

Joint Ventures in India

Options, Regulations and Restrictions

for Foreign Nationals and Companies

June 2025 Edition
(Tenth Edition)

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You may also like to read

Guide to Joint Ventures in India – Options, Regulations and Restrictions for Foreign Nationals and Companies

Available at <https://indialegalhelp.com/files/jvforeigncompanies.pdf>

1. Why is an SHA / JVA needed?

Any business can become stronger when resources are pooled in by either individuals or companies or firms. The process of joining hands is critical for a new business or startup. It is what gives the new entity its vital strengths whether in terms of expertise or skills or finances or markets.

Entrepreneurs or people who set up new startups are by nature enthusiastic and optimistic persons. They join hands with great hopes for the future and are full of dreams and enthusiasm. While the start of any collaboration is generally marked by joyful celebrations, the journey ahead is not always smooth. Majority of new businesses or startups face difficult times in the first few years due to a number of reasons. When going gets tough, the relationship that was at the foundation of the business / startup is likely to come under strain. Sometimes even when everything is going fine, the relationship among the founders starts showing strain due to their different working methods or personalities or due to some other such reasons.

It is estimated that more than one fourth of new businesses face discord among founders / promoters during the first five years. Splitting up of founders can have disastrous consequences for the business and sometimes even for the founding partners. A messy break-up is like a bad divorce. It can have emotional consequences in addition to financial repercussions.

It is important to be cautious about the possibility of break-up even when one is joining hands. No lawyer can prevent a break-up. We, as lawyers, can only help set up guiderails in the form of an SHA / JVA. The dynamics of relations between founders is something that they have to manage themselves. It is important to only join hands with persons who according to you are honorable, trustworthy, morally upright and with whom you share bonds of friendship. No document, howsoever well drafted, can protect you from the dirty tricks of a criminally minded scoundrel.

Having said that, even when you trust your would-be partner completely, it is important to sit down with him / her and define the contours of the relationship in as much detail as possible. Purpose of this exercise is not primarily to create a legal document which can be produced in a court of law. The purpose is to achieve clarity of thought and to ensure that each of the partners has exactly the same ideas / expectations at the time when the journey is just beginning.

During the initial phase of the relationship, there is a lot of mutual goodwill, respect and courtesies to enable significant amount of give and take. One must make use of this opportunity to discuss in a friendly spirit all possible issues and situations that may arise during working together. After discussions, the results of the deliberations should be put to paper in a document which can be called as Shareholders' Agreement (SHA) or Joint Venture Agreement (JVA) or Partnership Deed (PD).

An SHA / JVA / PD is important and necessary irrespective of the off-business relationship that the partners enjoy. Such a document can be useful even when the partners are husband-wife or are siblings or are otherwise part of a family. Our experience is that when the partners are bound by bonds of love or family, there is a greater tendency to push contentious issues under the carpet and avoid any free and frank discussion on key topics concerning the mutual relationship. This leads to problems accumulating leading to an explosion at some point of time.

Drafting of an SHA / JVA is not something that can be delegated to a lawyer. An SHA / JVA is a working document that must be prepared after extensive, free and frank discussions between the partners. There is no doubt that a legal professional can serve a useful role. A lawyer's role should ideally be that of a catalyst helping the partners decide the issues. He / she should present to the would-be partners questions on which they should apply their mind. He / she should let them take the decisions. He / she must not present any answers as standard / necessary / God's words. Of course, he / she will need to convert the decisions taken by the would-be partners into a legally consistent, formal, legible and clear document.

While an SHA / JVA is primarily a document by the founders and for the founders, one must remember that the SHA / JVA has to be shared with many key stakeholders such as other investors, lenders and sometimes even key associates and large customers. A

well-drafted SHA / JVA gives the impression that the enterprise stands on good foundations and is likely to be able to weather any storms that it may face in the years to come.

In the years to come, the SHA / JVA will prove useful even if there is no discord between the partners. The SHA / JVA might never need to be referred during the lifetime of the founding partners, but may serve a useful purpose when one of the partners departs from this world.

It will not be an exaggeration to say that a good SHA / JVA serves the business at each stage of the life-cycle of the business enterprise. A good SHA / JVA helps the founders in good times, in bad times, during their life time and even after they have moved to the world beyond.

2. Key Points of an SHA / JVA

Before one starts to draft an SHA / JVA, one must realize that the SHA / JVA is not a document for the government or the courts. SHA / JVA is a working document and should be drafted with business essentials in focus. Sadly, legal professionals rarely have an understanding of business. So, the entrepreneur or top management must get involved in preparing the SHA / JVA. One surely needs professional help in drafting an SHA / JVA. However, beware of a professional who has no experience of business and is only adept at steering his clients through courts.

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

- Who will bring in what resources – monetary, manpower, technology, management systems?
- What business will the new JV entity be engaged in?
- How will the Board of Directors be constituted?
- How will the Board of Directors decide matters – by majority vote / by consensus?
- Who will be the Chairman / Chairperson of the JV company?
- Who will be the Managing Director of the JV company? What will be the powers of the Managing Director?
- Will decisions relating to capital expenditure be taken by the Board of Directors or by the JV partners?
- Will there be decisions that will be taken only at the level of the promoters / partners (persons who sign the SHA / JVA) and not at the level of the Board of Directors?

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

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

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

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

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

3. Essential Parts of an SHA / JVA

There is no legally prescribed format for an SHA / JVA in India. However, it is advisable for any SHA / JVA to have the following parts:

A. Description

This is the first paragraph of the agreement. It usually begins with “*This Shareholders Agreement (hereinafter referred to as “this Agreement” or “the Agreement”) is executed on this day of the month of of year by and between:*”.

Date is usually a part of the Description. But it may also come at the end of the Agreement. It is advisable that the date comes at only one place in the agreement. This is to avoid the possibility that one date appears at the first place in the agreement and another date appears at the second place in the same agreement.

Key purpose of Description is to state the nature of the agreement.

B. Parties

Describing the parties by their name, address, nature of constitution along with some form of identification number is crucial. For a foreign company, country of its incorporation must be stated. For an Indian company, it is necessary to have its correct name, registered office address and Corporate Identification Number (CIN). For Indian individuals, Permanent Account Number (PAN) granted by income tax department should be stated.

It is important to ensure that details about parties are complete, detailed and accurate. Due diligence must be exercised in getting such details. For example, if an Indian company hesitates in giving its CIN or if the details provided by the company do not match the Master Data available on the site of Ministry of Corporate Affairs, Government of India, red flag must be raised immediately. Anyone doing a joint venture agreement with a fictitious Indian company is obviously walking into trouble.

It is advisable to do a thorough identity check of the potential partner at this stage. For Indian resident individuals, please insist on getting a copy of PAN card and AADHAR card. For companies and LLP firms the documents to be asked for are (a) PAN card issued by Income Tax department (b) GST Registration Certificate (c) Certificate of Incorporation issued by Ministry of Corporate Affairs, Government of India. Copies of the documents received from the would-be partner should be shared with the professional advising in the matter with instructions to verify whether the documents are genuine.

C. Recitals

Recitals state the situation as it existed prior to execution of the Agreement. Recitals are used to express the underlying assumptions, presumptions and mutually known facts at the time of execution of the Agreement. In case one of the parties has to plead fraud or cheating, recitals are useful.

Recitals also state the intentions and wishes of the parties. For example, it may be said – *“The Parties wish to work together to set up an Indian company for marketing the Products in South Asia”*. Such a statement is a wish and not a statement of mutual decision, which is likely to read as follows – *“The parties hereby agree to work together ...”*.

Often the parties to an agreement have mutually agreed to a common vision or dream or strategy for the proposed venture. It is advisable to put down the vision or dream or strategy in the Recitals. This defines the context in which the agreement has taken place and is often used to interpret the operative part of the agreement.

Any previous MOU / understanding / correspondence that had defined or influenced the relationship between the parties prior to the Agreement must be referred to in the Recitals. Whether the MOU / understanding / correspondence will cease to have further effect or will continue to bind the parties should come in the operative part or body of the Agreement (and not in the Recitals).

It should be noted that a mutual decision or agreement has no place in the Recitals.

D. Testatum

Testatum refers to the words used to introduce the operative part of an agreement. Testatum appears immediately after the Recitals and before the operative part of body of the agreement. Various examples of testatum are as follows:

- ❖ Now this Deed witnesses as follows:
- ❖ Now therefore the parties hereby agree as follows:

A testatum is not an essential part of an agreement. If an agreement does not have a testatum, it will continue to be legally binding. Nevertheless, a well-drafted SHA / JVA will generally have a testatum.

E. Operative Part or Body

Operative part or body of an SHA / JVA defines the rules for future. In particular, it is important to pay attention to the following in an SHA / equity-based JVA:

- Name of the new entity being created
- Constitution of the new entity being created –company or LLP
- Equity investment by each party
- Rules about loans by either party to the new entity
- Activities to be undertaken by the new entity along with geographical limits, if any. This will include the products / services to be manufactured / marketed by the new entity.
- Roles and responsibilities of each party in functioning of JV company
- Constitution of Board of Directors
- Who will be Managing Director and who will be Chairman?
- Powers of Managing Director / Board of Directors
- Decision making in Board of Directors – by consensus or majority

- Matters to be decided only by consensus of the parties
- Remuneration payable to working partners or directors
- Schedule of proposed actions after execution of the SHA / JVA
- Rules about transfer of shares
- Targets / Milestones to be achieved
- Procedure for review of operations

F. Legal Part

While the operative part mentioned above relates to day-to-day functioning or operations of the joint venture, the legal part relates to matters that have no relevance on a day-to-day basis. Such matters become most important when relations turn sour or in case of unexpected developments. Some of such issues are as follows:

F1. Modification / amendment of the JV Agreement

It is common to provide that the Agreement may be modified by the Parties by mutual consent in writing. In rare cases a step-wise procedure to initiate and approve change may be provided.

F2. Duration

The new entity or JV entity may be project-specific or may be of a fixed duration (say, three or five or ten years). An example of project-specific agreement is when two or more parties join hands to bid for a tender. In such a case, it is clearly agreed that as and when the assignment received after successful bid against tender is duly completed or comes to an end, the joint venture agreement will end.

In time-bound joint ventures, the relationship is terminated at the expiry of the prescribed period unless the parties decide to renew the agreement for such further period as may be agreed.

In equity-based joint ventures, it is often mentioned that the joint venture will come to an end as and when either party sells its shares to the other.

It is important to think and discuss about duration at the time of drafting the joint venture agreement. Decision of the parties in this regard should be clearly articulated in the agreement.

F3. Termination

A joint venture agreement is like a marriage – easy to get into, very difficult to get out of.

Often SHA / JVA prohibit unilateral termination by either party. In some cases, both parties to the agreement may be restricted from terminating the JV agreement. An example of such restrictions is when a JV agreement is formed for bidding against a tender to a government authority. The authority may insist that the JV agreement shall not be amended or terminated without prior approval of the authority.

Even where there are no such restrictions imposed by a third party, the parties may not want easy termination. It is customary to provide for a termination notice giving reasons for termination. The party demanding termination is required to give 30 / 60 / 90 / 180 days' notice in writing to the other party. The party receiving termination notice is given an opportunity to correct the flaws or shortcomings or complaints behind the termination notice.

Level of difficulty or complication that one wishes to introduce into the termination process varies from case to case. While a quick instant divorce is not good, a long-drawn-out process running for years is also not desirable. One has to determine the optimum process and mention it in the agreement without any ambiguity.

Absence of termination clause in an agreement will generally be interpreted to mean that the parties to the agreement are free to terminate the agreement at any time. A termination clause imposes restrictions on each party's right to terminate

the agreement. In the absence of a termination agreement, the relationship becomes like a live-in where either one can walk away without giving any notice.

F4. Post-termination

The most difficult part in any divorce is dividing the shared assets. Joint ventures are no different. While it is practically impossible to imagine and decide all post-termination issues at the time of execution of the SHA / JVA, it is worthwhile to try to put some thought into the subject at the time of preparing the agreement.

F5. Dispute Resolution by Amicable Consultation / Mediation

It is worthwhile to provide in an SHA / JVA some sort of procedure to enable the parties to meet and discuss their disputes with a view to resolving the same in a friendly manner. This can help save significant costs in arbitration and / or litigation.

It has been our experience that in an interaction between two business organizations, there are many persons involved from both sides. Some bad behaviour from a couple of guys from one or both sides leads to spoiling of organizational relations. These guys do not have the big macro picture or overall organizational interests in their mind. Generally, they are career driven petty-minded individuals who are more interested in saving their own backs instead of caring for organizational interests. At times like these, a meeting between the owners / Chairmen of the two organizations can be very useful. The owners / Chairmen have the ability to rise above all the petty politicking that might have gone on in the past. They are mostly entrepreneurs who are willing to swallow some pride for protecting business interests.

We, Anil Chawla Law Associates LLP, always suggest to our clients to include a pre-arbitration clause in an international or domestic agreement. The clause essentially says that the top persons of the two parties (in case of individual shareholders, the shareholders themselves in person) will have at least two meetings before a notice of arbitration is issued. Even in international agreements, we provide for two meetings – one in the town of each party. We tell our clients that even if you eventually decide to fight it out through arbitration, please have

two dinners together with some good wine or beer. Giving friendship a chance is worth the effort. Most of our clients appreciate our advice especially after they have a look at the probable costs of arbitration and associated legal processes.

While a meeting of the shareholders or owners is the simplest pre-arbitration dispute resolution procedure, mediation under The Mediation Act, 2023 (Act No. 32 of 2023) is the next pre-arbitration procedure. The parties may decide the name of a common friend or relative or associate to act as a mediator at the time of executing the SHA / JVA or may provide for a professional mediator as per the provisions of the Act.

Considering the significant costs (time and money) involved in arbitration / litigation, it is worthwhile to try to avoid both arbitration and litigation by resorting to mediation. The time to think about mediation is at the time of drafting the SHA/ JVA.

F6. Dispute Resolution by Arbitration

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court. Arbitration can only take place if both parties have agreed to it. In the case of future disputes arising under a contract, the parties insert an arbitration clause in the relevant contract.

Given the slow pace of judiciary in India, it is advisable that every SHA / JVA has an arbitration clause. The arbitration clause should be drafted carefully and should provide for all or most (as many as possible) of the following:

- (a) Intent to arbitrate before approaching court
- (b) Scope of arbitration
- (c) Rules of procedure governing arbitration
- (d) Law governing the contract

- (e) Law governing the arbitration
- (f) Ad hoc or institutional arbitration
- (g) If institutional arbitration, the body overseeing the arbitration
- (h) Number of arbitrators
- (i) Method of selection of arbitrators
- (j) Qualifications of arbitrators
- (k) Seat of arbitration
- (l) Venue of arbitration proceedings
- (m) Whether virtual hearings are permitted
- (n) Language of arbitration
- (o) Cost of arbitration
- (p) Whether punitive damages can be awarded
- (q) Attorney fees

We have discussed all aspects related to the above in our **Guide for Arbitration Clauses in International Agreements in India** (available at <http://indialegalhelp.com/files/guidearbitrationclause.pdf>). Please refer to the Guide for a detailed discussion on the subject.

F7. Dispute Resolution by Courts

In case the SHA / JVA has an arbitration clause, it should be clearly stated that neither party will approach a court unless the arbitrator(s) have decided on the dispute.

Irrespective of whether the SHA / JVA has an arbitration clause or not, the courts having jurisdiction over any dispute arising from the agreement must be specified clearly without any ambiguity.

F8. Confidentiality and Non-disclosure Agreement

In some cases, the parties sign a Confidentiality and non-disclosure agreement (CNDA) before start of discussions regarding joint venture. Even if such a CNDA has been signed, it is worthwhile to include provisions related to confidentiality and non-disclosure in the SHA / JVA.

Often parties like to provide that the provisions related to confidentiality and non-disclosure will survive the termination of the JV Agreement for a period of one / two / three years.

F9. Non-compete clause

Parties wish to stop each other from competing during the validity of the SHA / JVA and also after the termination of the SHA / JVA. Level and types of restrictions imposed may vary from case to case depending on the negotiations between the parties.

F10. Indemnification

Who indemnifies whom and to what extent and against what – these issues are often complex.

Both parties may indemnify each other against negligence, carelessness and violation of the SHA / JVA.

If one party is in the lead or active role and the other is in a passive role, the passive party may demand a higher level of indemnification.

F11. Force majeure

Force Majeure relates to events that are beyond the control of both parties. Typically, fire, flood, tycoons, riots, political upheavals, acts of God, acts of government, acts by international organization etc. are covered by Force Majeure clause. In year 2020, Covid-19 pandemic upset many businesses. Immediately after the pandemic spread many corporate houses rushed to relook at their

agreements to examine if the pandemic was covered by the Force Majeure clause. Even as we work on this Guide, there are situations that are changing every day in Israel, Gaza, Ukraine, and Iran. One never knows what will hit which business and when. This underlines the importance of a well-drafted Force Majeure clause.

As and when a Force Majeure event happens, either party to the Agreement is not bound to fulfill its commitments. However, this has to be specifically provided in the SHA / JVA.

Under Indian law, there is no specific provision for Force Majeure. So, the Force Majeure clause in the Agreement is the only recourse to the party which faces difficulty in fulfilling its commitments. Hence, the clause needs to be drafted carefully. Key constituents of a Force Majeure clause are as follows:

- (a) **Definition** of what constitutes Force Majeure event
- (b) **Exclusions** from Force Majeure – what does not constitute Force Majeure? For example, the bank not sanctioning term loan to a party – will it constitute Force Majeure?
- (c) **Notice** of start of event of Force Majeure
- (d) **Period** for which the Force Majeure event continues – Will there be a maximum limit for Force Majeure period?
- (e) **Effect** of Force Majeure event – What liabilities and obligations will be suspended? What duties and responsibilities will remain unchanged even in case of Force Majeure event?
- (f) **Consultation** between parties for future course of action – If the Force Majeure event continues beyond some specified period, the Agreement may provide for mutual consultations to decide future steps.

F12. Language versions and official version

Often an SHA / JVA between a foreign company and an Indian company is executed in English and the language of the foreign company. In such cases it is important to mention that the official version is English version unless the parties

decide otherwise. A confusion about which version is the official one can cause severe complications when the relations turn sour.

F13. Copies of the agreement

It is usual to execute the agreement in a number of copies and let each party have a signed copy. For example, in an agreement among four parties the agreement is executed in four copies. In such a case, it is important to state, *“This Agreement is being executed in four (4) copies. Each Party will receive one copy. Each of the four (4) copies is original and carries equal weight”*.

F14. Procedure for execution

Signing of an SHA / JVA between a foreign company and an Indian company poses the logistics challenge of physically meeting to sign the agreement in front of each other. It is not worthwhile to spend time and money on travelling across continents to merely sign an agreement. It is suggested that the SHA / JVA has a clause similar to the following from an Indo-Russian JVA:

Each party has printed a copy on the date mentioned hereinabove. XXXXX has signed its copy at, Russia and YYYYY has signed its copy at, India. Both Parties will send by courier their respective signed copy to the other. After receiving the copy signed by the other Party, each Party will put its signature on the respective copy and retain it for future reference. Thus, each Party will retain one copy and each copy will be original.

The SHA / JVA may be simultaneously (meaning on the same date) signed by the parties sitting in two different countries.

It may also be mentioned that the SHA / JVA does not need to be executed on a stamp paper or such other special legal paper. It must be stressed that an international SHA / JVA which is deemed to be signed in some place outside India must not be printed on Indian stamp paper since payment of Indian stamp duty will lend credence to the fact that the agreement was intended to be subject to Indian laws. However, if the SHA / JVA is a domestic one being executed in a city

of India, it should be duly stamped as per the laws of the state in which the agreement is being executed.

F15. Place of signing the agreement

An international SHA / JVA can be signed at any place in the world. As mentioned above, the agreement may be signed simultaneously at two different places.

Strictly speaking, it is not necessary to mention the place at which the agreement has been signed.

Let us consider an agreement between a company based in Paris, France and an Indian company based in Mumbai. The agreement states that the governing law will be French law. In such a case, mentioning the place of signing the agreement as Mumbai is avoidable. It is recommended that the place of signing should either not be mentioned or should be mentioned as the place whose governing law is applicable to the agreement.

F16. Persons signing the agreement

Under the law applicable to companies in India, a company is managed by its Board of Directors. Power to sign an agreement on behalf of a company vests with Board of Directors of the company. Board of Directors must pass a resolution authorizing a director or some other officer to sign the agreement.

It is in order for a foreign company signing an SHA / JVA with an Indian company to ask the Indian company to give a duly signed copy of resolution of Board of Directors authorizing the person concerned to sign the SHA / JVA. This might appear to be a matter of being overly cautious. It is not. This is extremely important, especially in case there are any internal differences within the Board of Directors of the Indian company. No foreign company will like to be holding an SHA / JVA which is not accepted by Board of Directors of their so-called Indian partner.

G. Testimonium

Testimonium appears after the body of the agreement. It sets forth the fact of the parties having signed the agreement. It is not an essential part of the agreement and does not affect the legal validity of the SHA / JVA. However, as it marks the close of the agreement there is no harm in continuing the established practice. A typical example of a testimonium is as follows:

- ❖ IN WITNESS WHEREOF the Parties hereto have signed and executed this Agreement on the day and date mentioned first hereinabove.

H. Signatures and attestation – Execution page

The signatures of the persons executing the SHA / JVA should appear after the testimonium. The names of the persons signing should be clearly mentioned. If one is signing on behalf of a company / firm / legal entity, the fact that one is signing on behalf of the company / firm / legal entity should be clearly mentioned. In such a case, it is advisable to mention the individual's name and designation along with the name of the organization.

It may be mentioned here that an SHA / JVA does not need signatures of witnesses. However, it is customary and advisable to have two witnesses attest the agreement. Except in international agreements (when it is inconvenient to arrange execution in front of witnesses), it is recommended to have signature of two or more witnesses.

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