Preface

Although everyone will agree that a joint venture is organized to create synergies that are unavailable to joint venture partners individually, very few people try to define synergies seriously. It seems that most people vaguely think of synergies as an increased social welfare by partnering. It is, however, not the case for joint ventures. A joint venture is a strategic alliance between two or more business companies. A business company will never participate in a joint venture to improve public welfare, but only for maximizing its own payoff (as a result, public welfare will be improved).

This book defines synergies as total return for each partner. The total return is comprised of three types of payoffs, i.e., return on investment, return from transactions, and ancillary return. This definition is not only realistic from a practitioner's point of view, but also makes it possible to analyze incentive bargaining in a joint venture from a game-theoretic point of view. In a successful joint venture, each partner is satisfied with its total return. If a partner is dissatisfied with its total return, its incentive to provide its monetary and human capital to the joint project will be lost. As a result, the other partner will not obtain sufficient synergies in the long run. Partners will bargain with each other for maximizing their own payoff.

A joint venture is a risky project, almost always with in-built conflicting interests. Partners predict opportunistic behavior of the other partner and easily lose their incentive to cooperate. Many joint ventures fail, not necessarily because of operational management failure, but because of organizational management failure, i.e., incentive bargaining failure.

Partners will confront various tradeoffs in incentive bargaining. Therefore, the key point of successful bargaining strategies is to maintain a good balance between partners' incentives. Partners can more easily reach a good balance by taking complementarities into consideration. For example, a partner may be satisfied with less control but greater return. Another partner may be satisfied with less monetary return but more ancillary return, such as a learning effect.

Joint venture is a typical long-term relational contract. Incentive bargaining in joint ventures is not a one-shot game but a staged bargaining, the pattern of which will change depending on the stage of the joint venture lifecycle. Typically, when a cost-center joint venture turns into a profit-center joint venture, two-player bargaining between the JV partners will be changed into three-player bargaining including management of the joint venture.

The pursuit of synergies in joint ventures will inevitably raise various legal issues, particularly intellectual property law, antitrust law, and corporate law. This book will cover critical legal issues of joint ventures. Legal analysis is basically premised on U.S. law (Delaware corporate law in particular) with occasional references to Japanese law.

This book is actually the result of a "joint venture" among a scholar and two practitioners. Zenichi Shishido has studied joint ventures from a law and economics point of view. Munetaka Fukuda and Masato Umetani have worked for the legal departments of two different international joint ventures, and have not only created and monitored many joint ventures, but have also solved their disputes. We have got together and discussed these issues on a monthly basis for the last 15 years and have finally reached a shared view on joint ventures. As a result, this book is based on Shishido's theoretical framework with rich details in practice provided by Fukuda and Umetani. Our study is based on many real cases both experienced by Fukuda and Umetani, and publicized by the media. This book has a list of joint venture cases reported by NIKKEI newspaper for the last 15 years as an appendix.

Although this book shares the basic analytical framework of our previous book published in Japanese (ZENICHI SHISHIDO, MUNETAKA FUKUDA & MASATO UMETANI, JOINTO BENCHA SENRYAKU TAIZEN: SEKKEI, KOSHO, HOMU NO SUBETE [JOINT VENTURE STRATEGY: DESIGN, BARGAINING, LAW] (Toyokeizai, 2013)), all chapters are reconstructed and rewritten for international readers.

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