

STRUCTURING JOINT VENTURES:

UNDERSTANDING THE LAWYER'S ROLE

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**Global Perspectives on Indigenous Peoples' Forestry: Linking
Communities, Commerce and Conservation (June 4, 2002, UBC)**

OVERVIEW OF MY REMARKS



“THINK GLOBALLY, ACT LOCALLY”

PERSPECTIVE

1. Theme and focus of this Conference is to promote understanding and exchange:
 - ▶ perspective I bring is as a lawyer and so I want to focus on **using a commercial lawyer effectively**

CONTEXT

2. The importance of CONTEXT – knowing where you are and where you are going.

ISSUES

3. Understanding the “typical” legal issues to be considered.

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CONTEXT

Plan for Success

1. The importance of the cultural context

- understanding the values, governance and goals of each other.
- get educated

2. The commercial context (business and law)

- **cooperation and collaboration** for shared economic benefits
- “joint venture” or strategic alliance as a new global business strategy

→ not a distinct legal concept (except Australia)

- business rationale, needs and expectations of each party → business plan → CERTAINTY
+
COMMITMENT



LEGAL ISSUES

The legal background:

Know the “default” rules and the mandatory rules:

1. What is the right structure?

- contract
- partnership
- corporation
- termination provisions

2. What is our decision-making process?

- role of directors, managers, employees
- confidentiality

3. Knowing the regulatory environment: What peculiar statutory regimes are important to understand?

- rights and obligations relating to the land;
- financing – capital structure;
- tax implications;
- marketing, sales and competition laws; and
- foreign investment rules

LEGAL ISSUES (con't)

The legal background:

Know the “default” rules and the mandatory rules:

4. What are the potential **RISKS** and how do we protect our interests?
 - to each other and the “independent jv” or business
 - to other parties

5. Living with what you have built – taking a **RELATIONAL** approach —▶ common-sense and business efficacy should be backdrop for disputes.



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“ The success of new business forms such as the joint venture will, therefore, depend on how they are recognized, and facilitated or hindered by law. One of the fundamental functions of the legal system is to facilitate marketing exchanges by enforcing private agreements.”

Joint Ventures: Legal and Business Perspectives (Irwin Law Inc., 1999) Reiter and Shishler (page 7)

“Venturers should assess the background regime to ascertain the extent of customization required because the negotiation and start-up costs will increase in proportion to the degree of necessary customization.”

Joint Ventures: Legal and Business Perspectives (Irwin Law Inc., 1999) Reiter and Shishler (page 9)



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