STRATEGIC ALLIANCES IN INTERNATIONAL TRADE: THE JOINT VENTURE CONTRACT

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ABSTRACT
Currently, in the global world in which we operate, and given the splendor achieved by international trade, it is of particular interest to carry out a reflection on the importance of strategic alliances, especially in joint venture contracts. The cooperation of companies, depending on the structural characteristics and targets, is increasingly becoming an alternative to conquer other markets. However, in spite of the various legal and doctrinal conceptions that involve this legal business, it presents itself as a common enterprise, having as content the common purpose itself and the obligation to pursue it. These instruments aim at the union and approaching companies for carrying out a joint project that otherwise would not be possible to achieve. Here lies the practicality of these contracts. Their structure leads to an analysis, which we will carry out, through doctrine, and real examples, seeking to highlight the main commercial legal aspects.

Keywords: contract, enterprise, International, joint venture

1. INTRODUCTION
The evolution of legal-economic relations has assumed great importance, especially in terms of cooperation and relationship between companies. Globalization has brought complex cooperative relations between companies contributing decisively to the exponential economic development. In developing countries, the needs for strategic alliances arose, above all, after the Second World War, serving the purposes of the much desired economic independence, especially by companies located on the old continent, eager for recovery. In turn, in Eastern European countries, joint ventures were the recommended solution for opening up to foreign investment (Pinheiro, 2003). The 1980s saw cooperation between companies based in the European Community and companies located in the USA, particularly in the automotive, aerospace, telecommunications and IT sectors. There was a real articulation between certain business groups (Morais, 2006). Along with the relationships between companies, in which each maintains their individuality, there are cases of concentration, where the dilution of the personality of each is shown. We found that these relationships arose under the guise of a business phenomena cooperation or, even, business concentration, having contributed to the appearance of joint ventures. In terms of business internationalization, we found that business cooperation has been a dominant attitude. Consequently, these instruments come to occupy a prominent place and provide legal support for this type of relationship. Whenever cooperation takes on the shape of business internationality, the figure of joint venture contracts is particularly prominent. These are achieved through a link between two or more companies that want to pursue a common project.

2. EMERGENCE
However, it is important to underline that, only from the 1960s onwards these contracts gain great international prominence. There are determining factors for its value that must be considered, in the scope of international commercial relations and in the conquest, by the companies, of new markets. It is important to bear in mind that the use of this type of instruments, which enhance strategic alliances, is mainly related to the high costs of
technological innovation. Through these types of contracts, it is possible to achieve, on the one hand, risk sharing, on the other hand, investment expenses. Similarly, states that receive foreign investment often demand from their investors, usually multinationals from developed countries, the participation of their local companies in the businesses in question. In this way, they intend to achieve the deserved development and the much desired international visibility. Regarding small and medium-sized companies, it has been verified and is still verified, nowadays, that they will only be able to reach the longed for internationalization through the existence of intense business collaboration. This will allow them to gather the means for future expansion. Roughly speaking, this cooperation proves to be a skillful mechanism for implementing business strategies. It is customary to point out the origin of the joint venture contract in North American business practice. American jurisprudence has also played an important role in identifying the characteristics of this contractual figure (Astolfi, 1981). They thus identified as essential elements of the contract: the existence of an express or tacit agreement by the parties involved, the existence of a common interest, the sharing of profits and losses and the need for mutual control. In short, cooperation, company and joint venture (Antunes, 2009). With the growth of these cooperation agreements, States have recognized their importance and implemented some policies to encourage inter-company cooperation. According to the Organization for Economic Cooperation and Development (OECD), we will be facing a joint venture whenever there is participation of several companies in the capital of an economic unit, legally independent, resulting in the sharing of assets, profits and business risk. In other words, there should be legal independence for the new company from those that give rise to it, sharing management and control over assets and profits. We cannot fail to mention the degree of social typicality that these contracts present, either at the national level of each state, or in the international trade scope.

3. MODALITIES
Joint venture agreements take two forms: unincorporated joint ventures (or contractual joint venture) and incorporated joint ventures (or equity joint venture). As for the former, we will say that these are associations of interests in which two or more companies, of different nationalities, sign an agreement with the purpose of exercising a certain activity, not giving rise to a new company (Pereira, 1988). The relationships between them are only mandatory. This modality has the following main characteristics: the reciprocal control of the members who are part of it, the contribution of each one to the joint venture, the pursuit of a common project, implying, e.g. a new productive capacity, new technology, presentation of a new product for the market and ability to enter new markets. Regarding the second modality, we will already be faced with the constitution of a new entity, of a legal person. Thus, there is a new organization with legal personality. We will be in the presence of an incorporated joint venture whenever a company is formed with the participation in the capital of partners/members, whether foreign or national. It may happen that participation in the capital takes place through an existing company. In view of these two modalities, it is also customary to identify them by the term contractual joint venture and corporate joint venture, respectively mandatory or organized cooperation. Joint venture contracts operate mainly in the construction, industry (production) and investment sectors (Pereira, 1988). Here, it is important to emphasize that, regarding joint ventures in the construction sector, consortia arise of purely contractual origin, where the regulation of the activity they intend to develop and the responsibility they will assume towards third parties with whom they establish contractual/business relationships are established (construction owner). At the same time, they provide for the sharing of risks, but not of profits. This is due, essentially, to the fact that the respective members of the joint venture thus continue to have control over the value of the work they do. With regard to joint ventures that operate in the industrial sector, we can say that its members are on an equal footing, with the intention, in
particular, of minimizing production costs. Finally, the latest joint ventures operating in the investment sector, want to achieve what is called direct profit. The purpose of these alliances is commonly referred to as an incorporated joint venture.

4. CHARACTERISTICS
The essential characteristics of this contract are: the pursuit of a common interest, the intuitus personae and object of cooperation. We can also add that the intended joint venture necessarily implies the observance of close collaboration between the parties. When we talk about joint venture contracts, we must keep in mind that they always assume a base contract. However, around it, there are complementary agreements, which normally deal with the regulation of the various specifics regarding the execution of the contract. Therefore, we will have an essential contractual nucleus through which all the organization's regulation materializes. This contractual element will manage the business activity that the parties intend to pursue (Morais, 2006). Thus, the head of agreement will define the common economic purpose, determining the ways of its implementation, listing the rights and obligations of the parties involved (Antunes, 2009). As for the complementary agreements, these are usually called side agrément, which will regulate, in the “specialty”, certain situations covered by the head of agreement. The collaboration that is established between the members of the joint venture cannot be reduced to a process of collaboration. These are effectively collaborative contractual relationships (Morais, 2006). It is also important to mention that the relations between the members of the joint venture are guided by the principle of non-competition. The common interest determines it, and may even entail sacrifices for the individual interests of each of the companies. These strategic alliances designated either as common enterprise agreements or referred to as joint ventures, must also establish the applicable law and the method of resolving disputes. Usually, they establish the arbitral route for the resolution of possible disputes between the parties to the agreement, and they often enshrine other extrajudicial mechanisms, such as mediation, negotiation, among others. Regarding to side agrément, it is also worth noting the existence of committees, made up of representatives of each of the companies, which are responsible for implementing guidelines to be followed by the members of the agreement (Pinheiro, 2003). We should keep in mind that these business agreements are characterized by some social characteristic, although the emphasis that differentiates them must be placed on the strategic alliance that is established among its members. Therefore, common interest and intuitus personae are not enough.

5. APPLICABLE LAW
In this type of cooperation, in addition to the place where the activity takes place, it is also significant the place where the activities of the companies that enter into the joint venture agreement. This undoubtedly affects the characterization of the contract. Assuming great importance in determining its internationality (Pinheiro, 2003), as well as in the problem of applicable law. Private International Law, called classic or traditional, regulates international private relations through an indirect process individualizing the applicable legal order through a given connection. However, this branch of law has dragged, through the ages, other forms of regulation of international private relations into its scope, also starting to deal with direct ways. We speak of the material or substantive way, special, capable of regulating international contracts, whether from an internal or an international source. The phenomenon of the international disclosure of certain international contracts and, among them, the joint venture contracts, seems irrefutable when, together, they are subject to conformation and regulation by norms of International Law and can be appreciated by international jurisdictions. Furthermore, there is a tendency to admit that international trade contracts can be shaped and regulated through an Autonomous International Trade Law even in the face of national legal systems.
(Vitta, 2003). It is important, with regard to international contracts, and in this case it is not an exception, to refer to the principle of autonomy of the parties in Private International Law. In this scope, it means that the parties can choose the law applicable to the contract. Usually, it is the lex fori of each country that decides whether to admit the autonomy of the parties' will as a connecting element. Although, at present, this principle has achieved transnational acclaim, ending up becoming one of the tenets of international trade. It is based on this principle that international trade operators make use of a wealth of uses and customs. We are talking, of course, about lex mercatoria. It is known that it originated in the expansion of international maritime trade, being born in the fairs of the Middle Ages. (Fioratti, 2004). At this moment, no matter when and how it was born, only its contribution to the theme is interesting. Today, it is unquestionably stated that international trade has contributed and still contributes, increasingly, to the formation of a normative body capable of regulating it (Manriruzzaman, 1999). This search is rooted in the fact that national laws and international law are inadequate to regulate international trade relations. Lex mercatoria thus presents itself as a very attractive option, and can be seen as a set of principles and rules for spontaneous creation, with international trade as a precursor (Goldman, 1964). We should also take into account its sectorial character, as the uses and customs emerge from different sectors of international trade. At the same time, the use of arbitration as a way of resolving conflicts in international trade has unquestionably contributed to the development of an autonomous system, in view of its neutral and effective role in resolving conflicts. Thus, lex mercatoria began to settle based on some uniformity of normative sources, namely commercial practices, standardized contractual clauses, standard contracts and arbitration jurisprudence. Not forgetting the unparalleled contribution of certain transnational organizations, created for the purpose of contributing to the harmonization of international trade law. We speak of the United Nations Commission on International Trade Law, UNCITRAL, the International Institute for the Unification of Private Law, UNIDROIT, among others (Glitz, 2012). Thus, in view of this global standardization, instruments were created that are capable of regulating at least some of the key aspects of international contracting. We are talking about hard law instruments, namely international conventions ratified by States and soft law, flexible law, not only customary, of spontaneous formation, but the result of the activity of certain entities, some of the mentioned above as well as others, as is the case of the Chamber International Trade Commission, CCI. In addition to all this, we still have the admissibility of contracts without law (state, international or transnational), in which it is the contract that regulates itself. The diversity of sources of regulation in relation to this type of contracts is, as we can see, a not insignificant reality (Pinheiro, 2003). Intercompany cooperation, having assumed outlines of great international relevance, has also contributed to the sedimentation of this type of instruments. This has been one of the main factors for the emergence and improvement of new contractual modalities, the joint venture being one of those realities.

6. EXAMPLES

Chevron Corporation and Weyerhaeuser Company. Development of renewable biofuels by converting biomass from cellulose into low-carbon biofuels. The two leaders in the cooperative fuel market, through funds, aimed to develop technology, to have more manpower to create renewable fuel sources. Unilever and Perdigão (Brazil). Unilever, owner of the brands and producer of Becel and Doriana products, and Perdigão, distributor, guaranteed through a strategic alliance the entry of brands into new markets. The two collaborating companies jointly contribute to marketing and innovation. Hewlett-Packard (HP)/Sony and Yokogawa Electric. Scope: operating in the Asian market. Nintendo/Gradiente and Estrela (Brazil) joint venture "Playtronic ". Launching of several games console. Examples: Super NES video games, Nintendo64.
Sony Ericsson and Globosat, channel programmer from Brazil. They got the Universal Channel, TeleCine Network, among others, to Brazil. Nokia and Siemens (2006). Nokia Siemens Networks, based in Espoo, Greater Helsinki, capital of Finland. Joint Venture motivated by other unions of companies in the industry. Telecommunications equipment manufacturers Sony Ericsson, one of the best known joint venture companies in the world. Union between Sony and Swedish company Ericsson, a manufacturer of telecommunications equipment. Hisun-Pfizer joint venture. The largest drug company in the world, Pfizer, has teamed up with the Chinese pharmaceutical company, Zhejiang Hisun. The merger of the company came after Pfizer detected a decline in its sales and for the potential of the Chinese market.

7. CONCLUSIONS
Joint ventures are presented as an instrument for business implementation, especially in the international aspect, for the conquest of new markets. As a concept, it presents some flexibility, being able to adjust to the type of enterprise according to the will of the parties. International business cooperation has been decisive for certain economic sectors, also facilitating the expansion of small and medium-sized companies to other markets. International strategic alliances end up being a means of enhancing great innovation, allowing the sharing of risks and contributing to world development. The competition factor has also contributed to a better coordination of efforts, especially by foreign authorities, in decision-making, even worldwide. In international joint ventures, it is possible to choose a law, normally arbitration and the choice of applicable law, which may fall under flexible law.

LITERATURE:
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