A Fragile Alliance: Mastering Joint Ventures

October 3, 2019

PANELISTS:
James P. Cate, Managing Partner & Founder, Glenfield Capital
Charles Hedden, Vice President, Joint Ventures & Partnering, Lincoln International
Jeff Meier, Chief Operating Officer, Pond & Company

MODERATOR:
Anne M. Cox-Johnson, Partner, King & Spalding LLP
What is a Joint Venture?

- Two or more parties
- Combination of resources
- Common business activity
- Shared risks and rewards
Why Form a Joint Venture?

Is a joint venture an appropriate strategy to achieve your / your client’s business objectives?

Joint venture v. other forms of corporate transactions (e.g., merger or acquisition)

- Joint ventures can provide a good alternative during times of uncertainty in the market or periods of operational uncertainty
- Can achieve growth while minimizing risk levels
- Access to capital
- Access to new markets and customers
- Access to expertise, technology or products
Why Form a Joint Venture?

Is a joint venture an appropriate strategy to achieve your / your client’s business objectives?

Alternatives

• Internal growth
• Acquisitions
• Strategic Investments
Advantages and Disadvantages of the JV

Other advantages / disadvantages to forming a joint venture:

**Pros**
- Very flexible
- Access to assets not otherwise for sale
- Shared risk
- Leverage complementary skills between JV partners
- Shared responsibility
- Opportunity to enter new geographic markets

**Cons**
- Give up control
- Shared profits
- Risk of post-JV competition
- Overdependence on partner
- Substantial commitment of time and expense
Structuring the Deal

Structuring the deal is a critical step in the JV process.

Appropriate structures for joint ventures:

- Jointly owned
- Corporations
- General partnerships
- Limited partnerships
- Limited liability companies
- Contractual joint ventures
Structuring the Deal

Structuring the deal is a critical step in the JV process.

Considerations affecting form of JV:

- Limited liability concerns
- Governance rights
- Third party consents
- Flexibility
- Tax considerations
- Business plan
- Regulatory issues
- Financing requirements
- IP Rights
- Transferability of interests
- Term of the joint venture
Choosing the Right JV Partner

How do you know if it is the right “fit”?

Key characteristics to consider:

- business synergies
- relationships with regulators
- complementary goals
- common vision
- access to resources
- level of trust
- size
- strengths and weaknesses

What is your experience with navigating the process to build an effective relationship with a JV Partner?
Structuring the Deal (Cont.)

Governance matters are heavily negotiated in connection with the structure of the deal.

<table>
<thead>
<tr>
<th>KEY GOVERNANCE POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Majority or minority position in the joint venture</td>
</tr>
<tr>
<td>Board appointments</td>
</tr>
<tr>
<td>Supermajority approval requirements</td>
</tr>
<tr>
<td>Deadlock resolution</td>
</tr>
<tr>
<td>Appointment to key management positions</td>
</tr>
</tbody>
</table>

Levels of governance rights:

- Executive officers conduct day-to-day business
  - Identification of key officers
  - Selection
  - Removal and replacement
  - Duties

- Board of directors must approve specified key matters
  - Number of directors
  - Appointment
  - Powers
  - Voting

- JV partners must approve specified key matters
  - Entry into of debt
  - Acquisitions/dispositions
  - Change of business direction
  - Hiring/Firing of CEO
Joint Ventures: A Case Study

Each of the panelists have extensive experience dealing with joint ventures.

James P. Cate  
*Managing Partner & Founder, Glenfield Capital*

*Case Study:* Glenfield entered into a JV relationship in 2012 for North Point acquisition and programmatic relationship with Trigate. Acquisitions exceeded $100 million for current economic cycle.

Charles Hedden  
*Vice President, Joint Ventures & Partnership, Lincoln International*

*Case Study:* Heineken joint venture in China.

Jeff Meier  
*Chief Operating Officer, Pond & Company*

*Case Study:* Pond & Company joint venture in 2014 with another AEC firm to pursue a contract with the U.S. DoD. JV partner sold their company to different firm which created conflicts related to similar contracts / assets.
Exit Scenarios

Early consideration of ultimate scenarios for eventual exits can be extremely important from the beginning of the life of the joint venture.

The parties anticipated exit strategy may dictate many of the JV’s key terms.

Typical exit strategies:

- Sale of the joint venture v. dissolution of the joint venture

Key items to consider:

- Number of contracts
- Tax structure
- Drag-along rights or similar rights
- Limitations on ability to transfer interests
- Deadlock provisions