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Venturing Into New Lands: Forming and Managing International Joint Ventures

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Introductions – Mayer Brown & Accenture Team

Bob Gray, Jr.

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- Member of Mayer Brown's global Corporate and Securities practice and on the Firm's Asia Board
- Advises boards of directors, as well as audit and special committees, of public companies in many industries
- Represents a variety of public and private companies in connection with cross-border mergers, joint ventures and acquisitions
- University of Michigan (BBA; MBA); University of San Diego School of Law (JD); NYU School of Law (LL.M)
- Fly fishing, golf and four children have taught him that a balance between patience and *festina lente* usually leads to positive results, particularly in foreign jurisdictions

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- Heads Mayer Brown's International Joint Venture and Strategic Alliance Initiative and is the Chair of Mayer Brown's Middle East Practice
- Advises clients on a variety of international business combinations and collaborations, including joint ventures, strategic alliances and other ongoing bilateral or multilateral contractual arrangements
- Charles' family is well known in the Middle East for its generations-long tenure in the pastry business, so he feels well equipped to help clients navigate sticky situations

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- Accenture's Global M&A Strategy Practice
- Career spent in M&A .
  - M&A Strategy & Advisory Consulting
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- Senior Adjunct Professor in Finance at Drexel University's Lebow College of Business
- M.Phil in Philosophy from Oxford University (UK); MBA in Finance and B.S. in Physics from University of California, Berkeley
- Happily Married with Three Young Children; based out of Accenture's Philadelphia office

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Overview of Today's Discussion

Forming and Managing International Joint Ventures

- Joint Venture Overview (What & Why)
  - Summary data on JVs, how JVs drive value, and high-level international and domestic challenges faced
- Approach & Execution (How & When)
  - How a **business** should effectively approach, evaluate, execute, and manage JVs
  - **Legal** considerations to acknowledge when executing and managing an international JV arrangement
- Closing Considerations (Now What?)
  - Key takeaways from today's discussion
  - Question & Answer (Q&A)

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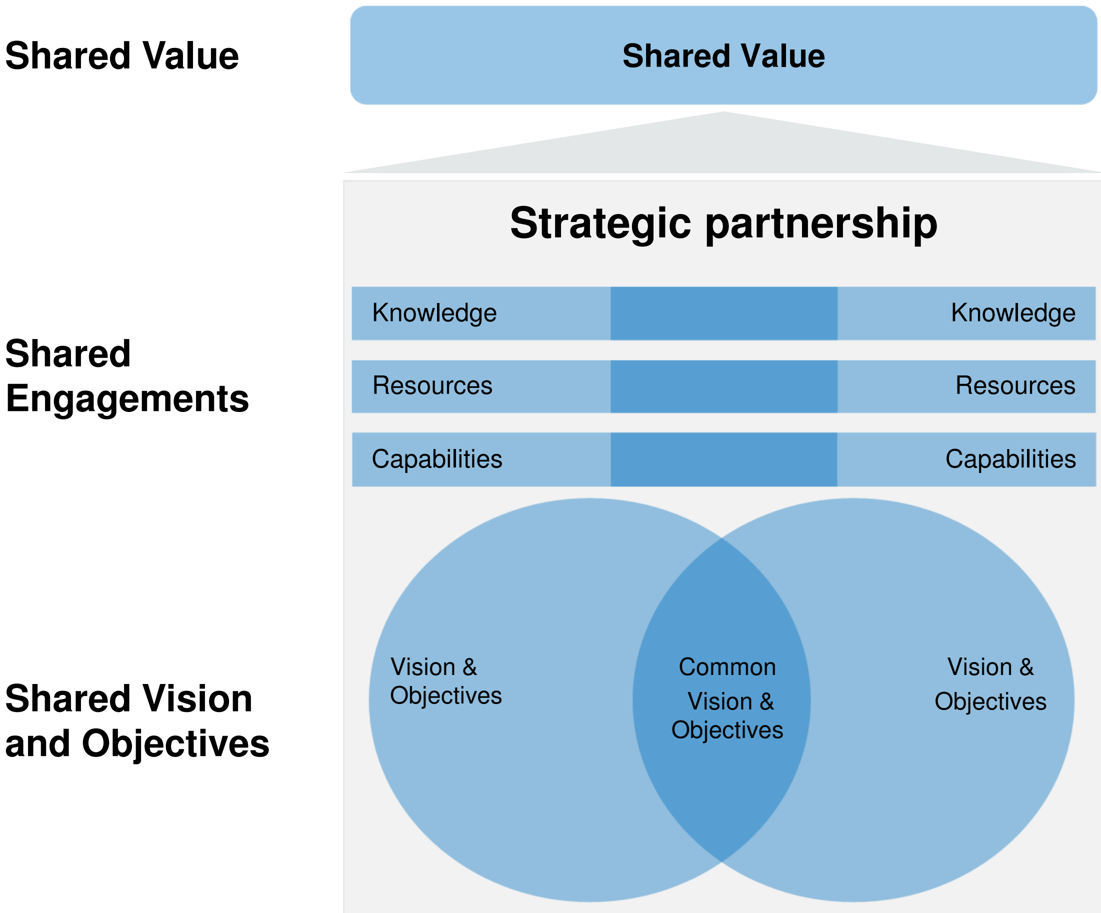
Joint Venture Overview

The key threshold question should always be whether you even need a "JV."

Is a JV really the right business solution?

The goal of a strategic JV is to deliver greater value than either of the two organizations could achieve independently

Joint Venture Overview



Key Points

- A strategic partnership creates value based on a shared vision and objectives as well as shared engagements.
- Commercial value is created by leveraging the partners' knowledge, resources and capabilities in common engagements.

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New growth opportunities and the potential for shared costs and risks are reflected in the top 10 reasons for pursuing Joint Ventures.

Joint Venture Overview

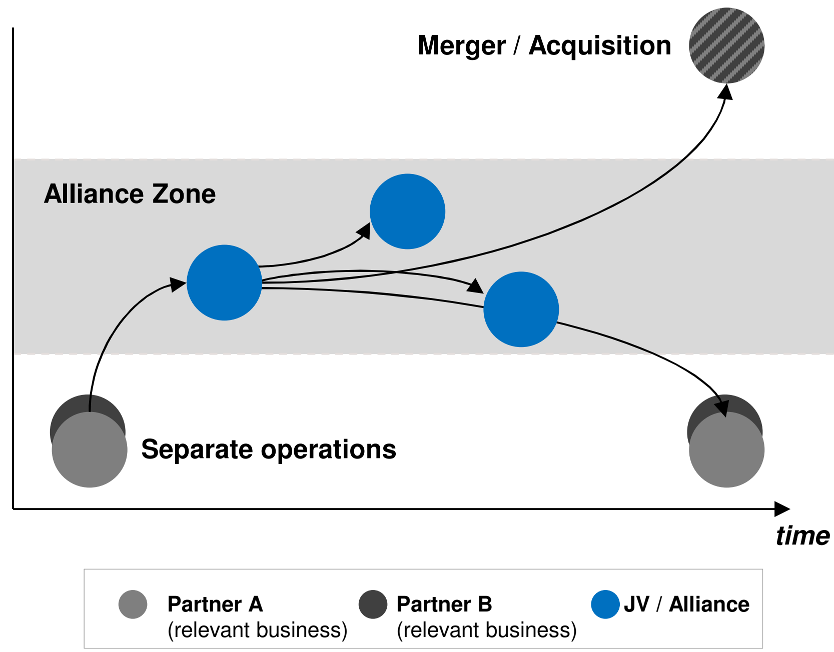
Top Reasons for Pursuing Joint Ventures

1	New market / business entry	52%
2	Cost reduction / consolidation	48%
3	Risk sharing	48%
4	New product development	41%
5	New distribution channels	38%
6	Geographic expansion	35%
7	Outsourcing	32%
8	Sourcing of products and services	28%
9	Bridge to M&A	27%
10	Technology transfer	26%

Source: PwC and CFO Research Services, The CFO's Perspective on Alliances, CFO Publishing Corp, 2004

Typical Evolution of Joint Ventures

Joint Ventures last less than 5 years on average, often transitioning to an acquisition by one of the partners



Joint Ventures are more likely to **succeed** when deployed **in one of three scenarios**

Joint Venture Overview

Successful Scenarios for Joint Ventures

1. **Market Expansion** – A partnership ensures capabilities and product offerings are in place to capture new market opportunities (e.g. geographic expansion, new product development, new distribution channels)
2. **Investment Affordability** – Companies pool investment funds to create value that each individual party could not afford (e.g. new oil exploration, technology development, cost reduction / consolidation)
3. **Risk Sharing / Portfolio Expansion** – Companies use joint investments to share risk and enable each company to make a portfolio of investments (e.g. pharma investments in new molecules)

Examples of Alliances

Diabetes Alliance

A few distinct challenges exist when it comes to international JVs.

1. Increasingly sophisticated rules and regulations, similar to the US (e.g., Anti-Monopoly Law in the People's Republic of China, and the EU Merger Regulation)
2. Conflicting or inconsistent legal and regulatory systems
3. Developing/unpredictable compliance & related enforcement regimes
4. Extraterritorial compliance requirements
5. Language and cultural considerations are intensified
6. Potential Export Control Reform Act of 2018 requirements

The challenges that we'll cover today will have overlap with that of domestic JVs, as well.

1. Requires unified vision by the parties
2. Non-competition restrictions / merger filings
3. Information sharing and ownership of intellectual property (IP)
4. Governance difficulties and risk of deadlock
5. Difficulties in exiting and liquidating investment
6. Risk of dedicated ("trapped") resources

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Approach & Execution

Approaching JVs with a comprehensive and coordinated end-to-end effort is critical for success. Today, we'll focus on JV agreement (JVA) considerations.

Today's Focus

Confidentiality Agreement · LOI Signed · JVA Signed · JVA Closed

Phase	1 Joint Venture Strategy	2 Partner Screening & Contact	Initial Assessment	3 Due Diligence & Negotiation 4 Plan JV Setup	Deal Close Start JV Setup	5 JV Setup Completion Execute and Monitor
Timing	1-2 months	1-3 months	1-2 months	2-3 months	1-2 months	1+ months
Responsibilities / Involvement	**1.1** Confirm strategy **1.2** Perform gap analysis **1.3** Decide on build, buy or ally **1.4** Define JV scope and objectives	**2.1** Agree on screening criteria **2.2** Screen and filter potential partners **2.3** Prioritize remaining candidates **2.4** Contact prioritized partners **2.5** Draft & execute Confidentiality Agreement	**3.1** Mobilize internal PMO **3.2** Perform high-level due diligence **3.3** Build business case & conduct prelim. valuation **3.4** Assess legal and tax transaction structures **3.5** Plan negotiations strategy **3.6** Identify key third party consents **3.7** Develop and sign Letter of Intent (if necessary)	**4.1** Conduct detailed due diligence **4.2** Finalize business case & valuation **4.3** Structure financing (future growth) **4.4** Develop JVA **4.5** Obtain internal approvals **4.6** Manage negotiation process & sign JVA **4.7** Manage communications (internal & market) **4.8** Set up legal structure **4.9** Define JV leadership & governance **4.10** Develop joint JV setup plan	**5.1** Obtain third party consents **5.2** Achieve closing conditions **5.3** Start JV/Alliance setup ("Day 1" Plan) **5.4** Plan JV setup completion ("Day 100" Plan) **5.5** Identify KPIs & performance metrics	**6.1** Plan and hold 1st board meeting **6.2** Detail full JV org. and kick-off recruitment **6.3** Set up initial functional support **6.4** Training and Post-Mortem
Out-come	▪ Joint venture strategy defined	▪ Potential interested partners identified ▪ Confidentiality Agreement signed*	▪ Letter of Intend (LOI) signed*	▪ JVA signed ▪ Detailed JV set-up plan complete	▪ Closing conditions achieved ▪ JV entity activated	▪ JV operational

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When launching a JV, businesses should plan around **success factors** and **key activities** to define the appropriate strategy.

In a 2017 study[1], 80% of participating JV companies met or exceeded expectations from the Alliance

1 Joint Venture Strategy

Success Factors for Joint Ventures[2]

Key Activities

Successfully executing Joint Ventures involves employing best practices and managing common pitfalls

- ✓ Get partner selection right
- ✓ Over-prepare for due diligence
- ✓ Focus on JV setup
- ✓ Prepare for negotiation roadblocks and get to "no" quickly
- ✓ Prioritize partner alignment & JV governance

(1) *Source: Forbes & Bain survey of 253 companies, The Secrets To Successful Joint Ventures*
(2) *Source: Accenture Data Quest; Survey with 450 CEOs*

After establishing a strategy, identifying and pursuing partners with the best long term fit is key.

2 Partner Screening and Contact

Key Points

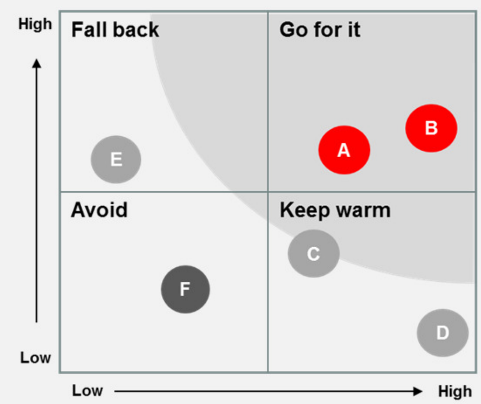
- Selecting the right partner is the #1 Success Factor involved in forming a JV
- Because conducting due diligence is expensive and resource-intensive; taking a detailed and rigorous approach to partner screening early in the process saves effort later in the process
- Potential partners should be screened based on “Ability to Execute” and “Strategic Fit”

Partner Selection Example

Partner Screening Framework

Ability to Execute

- Willingness to create JV
- Consistency of purpose and objectives with JV
- Cultural fit
- Regulatory issues
- People, technology and capability requirements
- Other potential deal breakers



“Fit” with purpose of JV

- Ability to meet defined goals and objectives
- Ability to fill strategic or operational gap, identified in the gap analysis

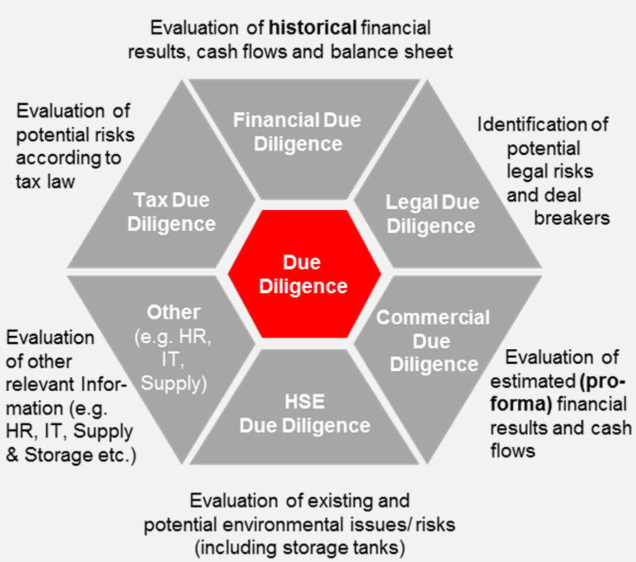
Due diligence is most effective when assigned to dedicated resources that start the process early.

3 Initial Assessment / Due Diligence and Negotiations

Key Points

- High performers will establish the due diligence leads, the processes for gathering and analyzing data, and the internal approval requirements well ahead of due diligence kick-off
- Due diligence is perhaps even more important in JVs than acquisitions due to the ongoing relationship between partners

Due Diligence Approach



Suggested Team Structure for Due Diligence

Stream	People (#)	Roles and responsibilities	Typical advisors
Due Diligence Lead and PMO	1-2	▪ Manage work and delegate tasks ▪ Integrate data, analysis and recommendations ▪ Communicate decisions and issues to leadership	▪ Consulting firm (e.g. Accenture) ▪ Investment Bank
Financial & Tax	3-5	▪ Review financial performance, assets, liabilities, risks ▪ Audit state of potential JV partner's accounts ▪ Check compliance of statements and assurance process ▪ Evaluate potential risks according to tax law	▪ Auditing firm ▪ Tax advisor
Legal	2-4	▪ Examine legal structure and contractual relationship with owners, lenders, commercial parties and insurers ▪ Review compliance and status of disputes ▪ Evaluate intellectual property rights and risks	▪ Lawyers
Commercial	5-7	▪ Review business strategy, plans and performance ▪ Examine relationships with key stakeholders ▪ Review governance, authorities and decision-making ▪ Assess organization, processes, technologies and assets ▪ Support development of alliance strategy and structure ▪ Support valuation of the alliance and value capture	▪ Consulting firm (e.g. Accenture) ▪ Investment Bank
Environmental	1-2	▪ Evaluate existing and potential environmental issues/ risks ▪ Test environmental compliance	▪ Special service provider/ consultancy
TOTAL	**12-20**		

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Scope

3 Initial Assessment / Due Diligence and Negotiations (continued)

- Define the JV's scope of business with specificity (in the context of the JV's operations over time)
- Consider non-competition covenants carefully

Venturer Beware!

- Exclusivity of relationship can be dealt with as part of "scope".

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Non-Competition Covenants

3 Initial Assessment / Due Diligence and Negotiations (continued)

Questions that should be asked of local counsel regarding non-competition covenants:

- What, if any, protections are automatically afforded under local law?
- Can additional protections be given?
- If so, how should we document the protections?
- How easy are they to enforce and what remedies are available?

JV parties generally agree to some form of a non-compete

- Being explicit and precise about what is not included in the JV business is sometimes as important as being explicit and precise in describing what is included in the JV business
- Consider geographic, product and customer implications

Non-Competition Covenants (cont'd)

3 Initial Assessment / Due Diligence and Negotiations (continued)

Other factors to consider

- Expected subsequent M&A activity
- Businesses of JV parties' affiliates (and evolution of both the JV business and the parties' respective businesses over the JV's life)
- Must a JV party first bring the JV opportunities that fall within the JV business to the other party?

IP Ownership

3 Initial Assessment / Due Diligence and Negotiations (continued)

- Does the JV have ownership rights to contributed or developed IP, or a license only?
- If the IP is licensed to the joint venture:
  - What is the scope of rights to be licensed? Is it limited to the field of use for the joint venture?
  - What controls are maintained by the licensor? With trademarks, a licensor clearly wants to protect the goodwill associated with the marks.
  - What about sublicenses? Distributors? Contract manufacturers?
  - Territory or market for use of licensed IP?
  - Who is responsible for and who pays for registrations/ maintenance?
  - Who is required to defend against infringement?
  - How are third party claims of infringement handled?

IP Ownership (cont'd)

3 Initial Assessment / Due Diligence and Negotiations (continued)

- Allocation of responsibility for developing new IP rights. One party may have better infrastructure to support development activities.
- But which parties can exploit the new IP? Determination of rights to use newly developed IP outside of the JV should be considered at the out-set. Parties may expect to have rights to exploit newly developed rights outside of the scope of the JV, perhaps within certain fields of use which are core to their other businesses.

Preparing for the expected negotiation roadblocks accelerates potentially “getting to no” quickly.

3 **Initial Assessment / Due Diligence and Negotiations**

Key Points

- Organizational alignment on key negotiation topics is critical for being able to structure a mutually beneficial deal or walk away from a potentially unsustainable JV early in the process
- It is especially important in negotiations to understand the brand strategy of the JV, the brand review process, and any competitive implications, particularly when either of the parties’ brands is directly involved

Sample Negotiation Topics

- Governance
- Financial
- IP
- Ownership & scope
- Contributions
- Third party arrangements
- How to deal with growth (financing and strategic)
- Exit & termination

Examples of Branding Issues:

- In 2007, Tiffany & Co entered an alliance with Swatch to design and manufacture Tiffany & Co. brand watches
- When disagreements arose around the brand vision and marketing, Tiffany’s paused the planned product rollouts, leading to legal action on both sides (settled for $449M in 2013)

- An industry-leading downstream Oil & Gas firm formed JVs with retail businesses to grow alongside some of the highest-potential sites in key markets
- Disputes over how to brand new JV sites diminished the brand uplift potential, impacting one of the key rationales for pursuing the JVs

Investing heavily in the JV setup plan lays the foundation for the future of the business and operations

4 **JV Setup Plan**

Key Points

- The JV setup plan should be a joint effort developed collaboratively by both of the JV partners
- It is important to align the JV operational team with the those involved in due diligence to ensure that all the findings are addressed and implemented
- A best practice is to place significant focus on the upfront operating model design (more than lines and boxes)
- The JV setup plan forms the basis for the new entity's business plan

Sample High-Level JV Setup Checklist

	JV setup activities before closing
JV entity setup	▪ Find and select office location(s) for JV (NewCo) and define number of people that require office space and likely timelines ▪ Obtain (greenfield) or verify/ transfer (existing business) licences to operate
HR & Resources	▪ Develop recruiting plan ▪ Agree key role descriptions ▪ List of employment contracts of people transferring & seconded
Legal	▪ Appoint legal advisors to JV ▪ Agree secondment agreement ▪ Agree purchase, trademark and other relevant agreements ▪ Develop corporate organization/governance documentation
Finance & Accounting	▪ Determine accounting year dates and reporting periods ▪ Confirm reporting structures ▪ Identify finance systems ▪ Appoint auditors to JV ▪ Select and transfer accounting employees ▪ Consider head office accounting support (e.g. payroll, AP, expenses, general ledger, consolidation of partner results) ▪ Arrange first transfer of cash
IT Systems	▪ Produce functional specification for initial IT system (link to office location action) ▪ Review existing IT platforms from JV partners as potential platform
Communi-cations	▪ Design and agree logo and branding ▪ Develop (joint) communication plan (internal to employees and external)

Considering critical U.S. antitrust issues during JV setup requires asking key questions.

4 JV Setup Plan (continued)

Do parties retain control of JV's and their decision making on competitive issues?

What is the likelihood of anticompetitive information sharing?

Does Operation of the JV Violate the Antitrust Laws?

- Key Question = Will the JV partners set prices, allocate markets, agree not to compete, etc., without a legitimate procompetitive purpose or is the collaboration a cartel?
- Examples of procompetitive effects:
  - Enables the creation of a new product;
  - Reduction in price for market buyers;
  - Measurable efficiencies the parties could not achieve on their own.

Considering critical U.S. antitrust issues during JV setup requires asking key questions.

4 JV Setup Plan (continued)

Is the JV "Legitimate"?

- Key Question = Are there procompetitive effects or is the collaboration a cartel?

Will formation of the JV confer market power?

- Key Questions = (1) Will the JV confer market power on the participating companies that would not exist otherwise? (2) If so, do the JV's procompetitive benefits outweigh the potential anticompetitive risks?
- According to the FTC/DOJ Guidelines, Sec. 3.33: market power increases the ability of the companies to create anticompetitive effects but…
  - "Market share and market concentration provide only a starting point for evaluating the competitive effect" of a joint venture.
  - A *main factor* in the agencies' evaluation of a JV is whether "anticompetitive harm is more or less likely."

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Considering critical U.S. antitrust issues during JV setup requires asking key questions.

4 JV Setup Plan (continued)

What factors are relevant as to the effect on competition?

- Key Question = to the extent the JV parties will continue to compete with each other outside the JV, will factors such as the terms of the JV agreement, structure of the JV management, and access to competitive information restrain such competition?
  - Does the agreement permit such competition?
  - Do parties retain independent control of assets required to compete?
  - Do parties retain control of the JV's and their own decision making on competitive issues?
  - What is the likelihood of anticompetitive information sharing?

When establishing a JV in Europe, EU anti-trust considerations should be taken into account.

4 JV Setup Plan (continued)

- A substantial portion of concentrations notified under the EU Merger Regulation (EUMR) each year have consistently been joint ventures
- Three principal questions that determine whether EUMR applies to a joint venture:
  - Is there an acquisition of joint control?
  - Is the joint venture "full-function", i.e. performing on a lasting basis all functions of an autonomous entity in the market (with sufficient resources and activities beyond specific limited functions of parents etc., e.g. not only R&D or sales agent)
  - Does transaction have an "EU dimension", i.e., EU/EU Member turnover of JV and/or partners above certain thresholds?

New U.S. Export Controls on Joint Ventures.

4 JV Setup Plan (continued)

- The new Export Control Reform Act of 2018 (ECRA) (the companion law to the Foreign Investment Risk Review Modernization Act (FIRRMA)) establishes new export licensing requirements.
- Applies to transfer of “emerging and foundational technologies” (such as artificial intelligence and autonomy) for joint ventures and other collaborative arrangements.
- This is the other side of the CFIUS “coin” (inbound acquisition restrictions).
- Authorizes the U.S. Department of Commerce to require identification of not only foreign person joint venture parties, but also any foreign person with significant ownership interest in a foreign joint venture party.

JVs fail mostly due to how the partnerships are **structured, aligned, and governed**.

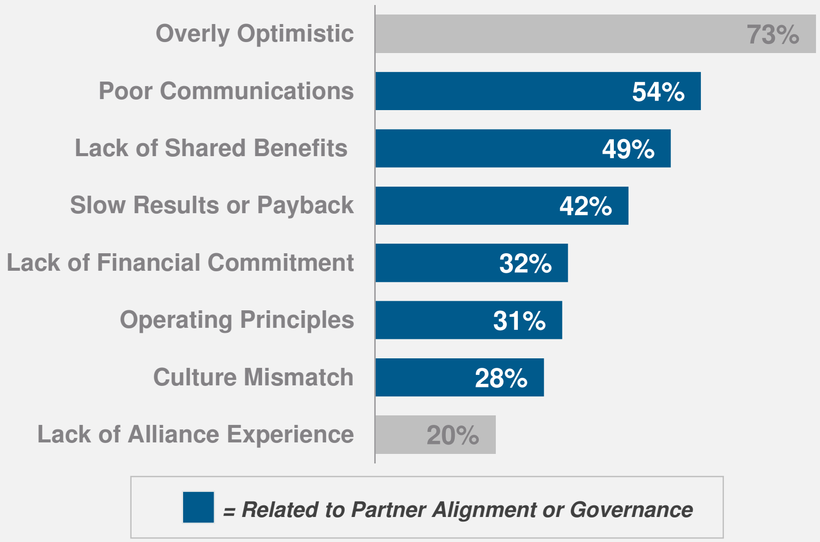
In a 2017 study[1], 20% of participating JV companies did not meet expectations from the Alliance

5 Start JV / JV Setup Completion / Execute and Monitor

Key Points

- A majority of the reasons most often cited as drivers for JV failure are related to either a lack of partner alignment or weak governance
- Utilizing the Board of Directors to focus on the agreed key decisions will help ensure alignment throughout the operational life of the JV

JV Failure Factors[2]



Governance Decisions

Governing Bodies

- JV Board of Directors
- Other governance levels, like alliance manager, operating committee, etc.

Decisions

- Annual budget & business plan
- Major capex
- Dividend policies
- Change in future growth plans
- Banking / borrowing / hedging
- Delegation of authority (DOA)
- Exit strategies

Non-Exhaustive

(1) *Source: Forbes & Bain survey of 253 companies, The Secrets To Successful Joint Ventures*
(2) *Source: Accenture Data Quest; Survey with 450 CEOs*

There are **six key topics** to consider when establishing the appropriate **JV governance structure**.

5 **Start JV / JV Setup Completion / Execute and Monitor (continued)**

1. Control
2. Fiduciary considerations
3. Voting considerations
4. Major decisions
5. New partners
6. Deadlock resolution

1. Control Issues

5 Start JV / JV Setup Completion / Execute and Monitor (continued)

- Minority, 50/50 or majority (but may shift over time)
  - Understand any foreign ownership restrictions or limits on expatriation of profits
- Management (directly) by the partners
- Board of Directors
  - Selection of directors
  - Size of board
  - Structure to mitigate risk of deadlock
  - Supermajority decisions

2. Fiduciary Considerations

5 Start JV / JV Setup Completion / Execute and Monitor (continued)

- Always need to consider:
  - Fiduciary duties
  - Duty of loyalty
  - Corporate opportunity doctrines
  - Other duties that are owed to the JV or your partner (that may not be waivable)
- If possible under local rules, consider expanding or restricting duties (and rights) through a different and more specific set of negotiated contractual protections
- Director protection: Exculpation & Indemnity provisions

3. Voting Considerations

5 Start JV / JV Setup Completion / Execute and Monitor (continued)

- Voting rules will depend on the nature of the JV, the number of partners, equity interests, etc.
- Clearly and specifically delineate matters that require partner approval or a supermajority (or other special) vote
- Limit voting rights of a partner that is interested in a particular transaction

Note: Always ask local counsel if there are limitations or peculiarities of local law that impact your desired voting/control structure

4. Major Decisions

5 Start JV / JV Setup Completion / Execute and Monitor (continued)

- Changes in the business purpose or strategic direction of JV
- Changes in organizational structure
- Appointment of certain officers (e.g., CFO)
- Acquisitions of other companies or assets, or dispositions of JV assets
- Major litigation or investigations (third party or governmental, initiation or settlement)
- Exit or dissolution of the JV
- Admission of new partners

5. New Partners

5 Start JV / JV Setup Completion / Execute and Monitor (continued)

- Require approval for new partners
- Very important – want to decide with whom entity partners (not competitors or those with reputational risks), so be sure to set clear terms of admission
- Retain preemptive rights (i.e., right to purchase pro rata share of interests to be issued) to prevent dilution
- Permitted transfers
  - Lock-up period
  - Transfers to affiliates

6. Deadlocks

5 Start JV / JV Setup Completion / Execute and Monitor (continued)

- Escalation to officers of partners
  - Often only continues the deadlock
- Mediation/arbitration
  - May be of limited use unless the mediator is well-versed in the business issues and industry. Arbitration is not appropriate for resolving business issues
- Put/call rights, or wind up the business and sell to a third party or to a partner, or split the assets in a pre-determined way
  - Forced dissolution may taint the JV's (or a party's) reputation and decrease the value obtained from a purchaser
  - Need to ensure when structuring a mandatory sale that each partner's support contracts and arrangements survive or transfer

Note: Always consider whether your choice of governing law results in a forced resolution

True or False?

Compliance is less of a concern for JVs in which a party has a <u>minority</u> interest, since it is not in control.

<u>False</u>: A party's reputation and brand are still at risk. Minority interests in a JV can also evolve into majority interests.

Compliance: Always a Priority

- Anticipate, identify and mitigate compliance issues and risks
  - Anti-trust
  - Anti-bribery/corruption
  - Anti-money laundering
  - Economic and trade sanctions
- Protect against reputational risks and liability

Note: Are party-approved compliance programs required for majority-owned and minority-owned JVs?

Note: Does a party require vetting of third-party intermediaries (agents, distributors, sales reps and JV partners)?

Compliance: Potential Partner Obligations

- Documented request list should be tailored to specific company, industry and country
- Robust representations & warranties can mitigate risks identified in due diligence
- Contractual compliance certifications from partners and JV help address concerns related to:
  - Bribery/corruption
  - Conflicts of interest
- Beware of red flags (i.e., recommendation of an agent despite lack of experience, unusual payment terms)
- Requesting and exercising audit rights helps deter violations and mitigate liability

Exit:
How can partners exit the JV & realize value on their investment?

Exit: Dissolution or Transfer?

Dissolution:

- Duration of JV: perpetual or limited
- Other common termination/dissolution events
  - Change in control of a JV party
  - Deadlock
  - Bankruptcy or insolvency of a parent
  - Failure to meet pre-determined objectives
  - Breach – but generally would require a high materiality standard

Exit: Dissolution or Transfer?

- **Termination/dissolution issues**
  - Unwind provisions are probably the most complex aspects of the JV Agreements
  - How will assets be distributed?
  - How will continuing liabilities (e.g., warranties, defects, guarantees) be handled?
  - What rights survive a termination? (confidentiality, non-competes/non-solicitation)
  - Disadvantages to a party in a termination/dissolution must be taken into consideration at the on-set of formation (i.e., one party has less liquidity than another with which to fund a buy out)
  - What happens to contributed assets, particularly IP, on termination (continuing license of IP, right to purchase)
  - What right should the continuing partner have to trademarks (transitional – 6 months to 1 year transition period)

Exit: Dissolution or Transfer?

Transfers:

- Voluntary or forced (e.g. if default or deadlock)

Exit: “ROFO” & “ROFR”

- Rights of First Offer (ROFO) vs. Rights of First Refusal (ROFR)
- *Pricing* –
  - Formula, fair market value or price offered by third party
  - Inclusion or exclusion of discounts for lack of control and no public market
- Advantages and disadvantages of ROFOs and ROFRs

Exit: Tag-Along & Drag-Along Rights

Tag along rights (i.e., right to participate in a sale):

- Most common protection for partners not triggering the exit

Drag along rights (i.e., right to require participation in a sale):

- Fair value protection
- Limited participation in representations and warranties and indemnities (e.g., dragged partner only required to represent its ownership of equity, but no representations as to operational matters)

Exit: Other Buy/Sell Rights

- Russian Roulette:
  - Triggering party : “I will sell my shares for $100 or buy yours for $100”
  - Non-triggering party indicates whether it wants to be buyer or seller
  - Resulting buyer pays all cash at closing
  - If the buyer defaults, the seller can pursue remedies or becomes the buyer at a predetermined discount (90% - or $90)
- Texas shoot out
  - Each party submits sealed, all-cash bid with the price they would sell their interests for
  - Higher bidder “wins” and must buy the “loser’s” shares at the high, winning price

Exit: Other Buy/Sell Rights

- Dutch Auction
  - Each party submits sealed bid with the minimum price they would sell their interests for
  - Higher bidder "wins" and buys "loser's" shares at the lower price submitted
- Alternative #4
  - Triggering party: "I will sell my shares for $100"
  - Non-triggering party must buy at the stated price, otherwise the triggering party can become the buyer at that price

Exit: Other Buy/Sell Rights

- Alternative #5
  - Triggering party orders an appraisal, which sets a floor price
  - Both parties indicate whether they wish to buy or sell at the appraisal price
  - If both want to buy, incremental bidding until the "high" bidder wins
  - If both want to sell, continue to work out dispute

Exit: Potential Challenges

- Regulatory
  - Approval may be required (e.g., local regulatory requirements or qualifications)
  - Anti-trust considerations
- Contractual
  - Confidentiality provisions may prohibit disclosure to potential third-party purchasers
  - Poorly drafted transfer provisions may require waivers and consents from other partners

Closing Considerations

Key takeaways that should be understood.

- ✓Always ask: *Is a JV the right solution for my international business objective?*
- ✓Thoughtful structuring with input from experts helps define the JV's purpose and scope appropriately and the partners' relationships with each other
- ✓Make sure your JV partner is "on the same page" with the importance and priority of compliance matters
- ✓Anti-trust and IP ownership considerations must be explored and evaluated
- ✓JV setup, structure and governance are critical components to manage a JV business successfully

Questions