7 Practical Tips for Negotiating Joint Venture Deals

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The Hogan Lovells M&A team and the Ankura Consulting JV practice outline seven practical tips for negotiating JV deals and improving the JV deal process.

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In the face of economic and geopolitical disruption, companies are increasingly entering into joint ventures, strategic investments, and partnerships ("JVs") to address their most pressing challenges. In fact, the number of new material JVs announced in 2024 increased by 50% in the two years since 2022, even as overall M&A deal volumes declined.[1]

While the rise in the number of JV deals may suggest that companies are completing JV transactions with ease, in reality, JV deals are challenging to execute. In addition to negotiating traditional M&A terms (e.g., representations and warranties, indemnities, and valuation), JV parties must also reach agreement on terms that survive after JV formation and throughout JV operation (e.g., voting rights, IP use, exit provisions, and commercial/support agreements with one or more partners). With so many moving parts, getting to JV formation can be an extended process – requiring training, endurance, and grit.

Fortunately, companies can take concrete steps to improve the JV deal process. Below are seven practical tips for negotiating JV deals.

1. Assess the economic value of the JV holistically – and focus your team on the sources of value

When evaluating the economic value of a potential JV, partners should assess both the JV's direct economics as well as the broader economic implications of the JV for each partner. To stay focused on the key value drivers throughout negotiations, deal teams should create a concise "one-pager" listing the contemplated sources of value and, where quantifiable, their corresponding dollar amounts.

Determining the total economic impact of a JV might seem straightforward, but can present significant challenges in practice. Each prospective partner should estimate the JV's total impact on its profit and loss (P&L), considering both the direct effect of the JV's P&L and any additional revenue streams, such as licensing IP or providing services to the JV. Cost reductions should also be factored in. Although harder to quantify, intangible benefits, like enhanced standing with regulators because of a partner's relationships or new market access, could have significant economic impacts and should not be overlooked.

Building a robust JV business case requires a clear understanding of the JV's scope, market potential, and timeline for delivering value to the partners. JV-partner ancillary arrangements (e.g., supply agreements, service agreements) are often negotiated as part of the deal process, complicating dealmakers' ability to deliver a full economic assessment. Despite these complexities, dealmakers must analyze all variables – tangible and intangible – to develop a complete view of a JV's economic value.

1 Ankura Consulting Joint Venture Index – 2023 in Review; Ankura Consulting Joint Venture Index – 2024 in Review

2. Plan for the deal to take time – so manage resources and expectations accordingly

JVs can take considerable time to finalize. On average, it takes about 341 days from an announcement of a Memorandum of Understanding (MOU) or equivalent document to the closing of a JV deal.[2] Given that companies usually undertake months of work before an MOU announcement, the average timeline to negotiate and close a JV deal is roughly 18-24 months. With these extended timelines, deal fatigue can be a significant risk – both for team morale and the deal's success.

To navigate these challenges, companies should create a dedicated deal team with a clear allocation of responsibilities. Part-time or side commitments can lead to incomplete transactions. It is crucial for JV partners to dedicate resources and continuous support from appropriate functions and leadership throughout their respective organizations.

Companies should also manage senior decision makers' expectations. Periodic updates on deal progress can help align expectations around deal timelines and terms. By setting clear expectations upfront, staffing robust teams, and engaging executives appropriately, companies can mitigate disappointment and increase the likelihood of successfully closing a deal.

3. Use term sheets to drive alignment on core deal points – and to avoid a premature (and potentially costly) rush into definitive agreements

Term sheets can be helpful for achieving a preliminary "meeting of the minds" on the form, structure, and fundamental commercial terms of a JV. Too often, however, potential JV parties jump from a high-level term sheet (e.g., 1-3 pages covering only a few terms) to definitive agreements without first aligning on core JV terms, such as funding obligations and exit rights. Rushing to the definitive agreements prematurely can lead to multiple additional rounds of drafting, resulting in deal fatigue and inefficient use of resources.

To avoid these pitfalls, if an initial term sheet is high-level, parties should prepare a second, more detailed document that covers a wider array of topics. This approach enables the parties to clarify their expectations, identify any major issues early on, and ensure basic alignment on key terms before drafting more detailed language.

However, it is also important to recognize when the value of a term sheet has run its course. If reaching alignment on an issue requires seeing detailed legal language and misalignment is unlikely to be a "deal killer," save it for the definitive agreements.

By using term sheets effectively, parties can ensure alignment on fundamental aspects of the JV, streamline the negotiation process, and reduce the risk of costly delays and misunderstandings.

2 Joint Ventures: When to Announce the Marriage and How to Survive a Long Engagement - Ankura Joint Ventures and Partnerships

4. Be willing to negotiate the deal in person when appropriate – but do your homework

The complexity of JVs and the interdependency among JV terms often require in-person meetings to advance the deal. Meeting in person allows potential partners to spend meaningful, focused time discussing the transaction and to make progress across the entire scope of open points. Without this dedicated time, JV deals tend to progress more slowly, as partners attempt to resolve individual issues in isolation over calls, only to circle back when, inevitably, a related matter needs to be addressed first.

In-person meetings also help JV partners develop relationships and trust. These are key building blocks for forming a successful JV. Conversely, these meetings can reveal differences in values and corporate cultures between partners – enabling partners to identify those differences earlier and adjust accordingly.

To ensure in-person meetings are productive, attendees should prepare and follow meeting best practices. For example, participants should pre-align on the attendee and topic list, ensure decision makers are present, and include time for internal break-out sessions. Additionally, it is beneficial to leave the meetings with a document memorializing the parties' shared understanding of the outcomes. This could be a working draft of a term sheet, an issues list, a list of action items (and who is accountable for each and by when) and/or another document. By preparing and adhering to these best practices, dealmakers can maximize the effectiveness of in-person negotiations and move the JV deal forward more efficiently.

5. Plan for JV launch during the deal process – align on key elements before Day One

The launch of a JV is critical to its future success. A smooth operational start can set the tone for the JV's future performance. A slow or problematic launch, on the other hand, can frustrate partners and even trigger dissolution of the venture. Fortunately, companies can take steps to plan for a successful JV launch.

First, companies should define and involve a JV operating team early. The team can identify practical issues with proposed terms, align on deal purpose and scope, contribute to the JV business plan, and start preparing for Day One operations while the deal is being negotiated.

Second, parties should align on a robust and realistic JV business plan. While agreeing on contractual terms is essential, aligning on the business plan is equally, if not more, important. A business plan helps the parties clarify a shared vision of how the JV will operate in practice and ensure they are on the same page.

Third, dealmakers should consider the people and organizational aspects of the venture. Key considerations include identifying who will perform the work of the JV, how they will be incentivized and compensated, and how to establish a compelling employee value proposition to attract and retain JV talent.

6. Focus the definitive agreements on what really matters to the JV – and keep them simple

JV agreements are intended to establish the rules of the road for a long-term partnership. JV partners face a challenge in determining the appropriate level of detail and prescriptiveness for these rules.

Often, partners try to anticipate and address a comprehensive list of potential future scenarios within the JV definitive agreements. This "cover every hypothetical" approach can lead to protracted negotiations over complicated legal mechanisms, which in turn may highlight even more hypotheticals to address. The desire to be overly prescriptive and limit hypothetical risks can therefore delay deal closure, increase transaction costs, and even undermine the business case.

On the other hand (though less commonly), partners may rush into quickly drafted JV agreements without adequately considering future scenarios. This approach can backfire when partners find themselves bound by agreements that do not accommodate changing circumstances.

To strike the right balance, we advise prospective JV partners to focus on two key items: first, the terms that matter most to the success of the JV (both for the JV itself and the partners) and second, the scenarios that are most likely to arise. In general, dealmakers should aim to make the definitive agreements simple and clear – allowing the governance system to address more specific scenarios as they occur.

7. Engage the right advisors – experts with substantive JV experience to complement your resources

Companies often lack the in-house resources or experience to execute a JV effectively. As a result, they engage external advisors for support.

When selecting external legal counsel, companies should ensure the selected legal team has significant JV experience, especially in advising strategics with active roles in their JVs. Many law firms claim JV expertise but focus primarily on full acquisitions or JVs involving financial investors with passive roles. Strategic JVs present unique challenges and require counsel familiar with strategic JV formation and governance. For example, only law firms with meaningful JV experience would know that parties should decide early which partner intends to consolidate the JV in its financial statements – a decision that significantly impacts JV control rights, governance, and executive appointments.

Companies can also engage consultants to bolster the work of the internal corporate development or M&A team. Companies should carefully select consultants who have substantial experience working on strategic JVs. Experienced JV consultants can help shape the venture's operating model, business plan, and launch. A qualified JV consultant can also share how peers have structured JVs, what has worked (and what has not), and leverage JV-specific data and benchmarks.

Other advisors may be engaged as needed, including for diligence, valuation (e.g., an investment bank for existing companies or assets), tax, accounting, and/or other specialized areas. Wherever in-house resources are unavailable, support from external experts can help.

Conclusion

JV transactions are likely to be critical to companies' futures as companies navigate economic and geopolitical disruptions, look to decarbonize, use new technology, expand geographically, and evolve in other ways.

Successfully negotiating a JV requires a strategic approach that balances thorough planning with practical simplicity. Completing JV deals can be a daunting task, but by implementing the steps outlined here, companies can navigate the complexities of JVs and build enduring partnerships.

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