Dinsmore&Shohl LLP
ATTORNEYS

Top 10 Issues When Considering a Joint Venture

March 29, 2011

Harvey Jay Cohen , Jacob A. Manning , Frank Schuckmann , Peter A. Draugelis

Leading diverse companies through the consideration and implementation of Joint Ventures in the U.S. and numerous foreign jurisdictions provides a short list of Key Issues that a client must consider.

1. JVs require client personnel to devote several months of close attention to detail and significant legal fees. Most JVs fail within 3-5 years. The JV business plan should be comprehensive and agreed upon up front as well as compelling.
2. There often are cheaper and easier alternatives to a JV.
3. Will company names, trademarks, patents or know-how be transferred to the JV? What happens to IP the JV develops? As most JVs fail and one party buys out the other, what happens to the IP? Would the JV be worth buying if the exiting partner takes back all its IP on the date it gets bought out?
4. Will the JV sell its goods and/or services through one of the party venturers? Realistically, what will happen if their sales disappoint?
5. What are the ownership/capital contribution percentages? Can each party provide enough capital? Future needs for Capital?
6. A minority party venturer will want veto rights over many key JV decisions. What Board and Officer slots go to which party venturer?
7. A formula for the likely eventual exit/buyout of a party is preferable, cheaper, quicker and easier than valuation, negotiation, arbitration or litigation.
8. Who will fill the key executive employee slots? Fixed and incentive compensation? Non-Competition. Loyalty to the party they came from, if applicable?
9. Triggering a buyout: Impasse in decision making? Poor financial results? Death of a venturer or key person? A specified period of years has passed?
10. Will the JV be perpetual or have a term, for example, ten years?