An HR guide for navigating JVs

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With the right knowledge and tools, the HR professional can be an integral part of the JV team.

Joint ventures (JVs) have become an important element of many companies' business strategy. For those aiming to do business internationally, JVs are often the only feasible way to enter new markets.

Due to the many complex human capital considerations necessary in any JV, it is essential to have HR involved from the early stages when a JV is being considered. To contribute meaningfully to these discussions, HR professionals must understand the potential issues and problems that can arise in a JV and have the resources necessary to develop solutions.

Given the strategic importance of JVs in today's global business environment, one might expect to easily find guidance on tackling the complexities of a JV, based on widely used, successful methods. But that's not the case. A review of the literature on JVs shows much of it to be incomplete at best, contradictory at worst. Tactics and solutions that make sense for one JV often don't resonate for another for reasons that aren't obvious or explained by the experts.

After helping many clients navigate the human capital issues of JV journeys, we've developed the following guidelines for HR professionals faced with the prospect of an impending JV. You'll also find a list of common JV term definitions at the end.

Arm yourself with knowledge and tools

First, the HR professional needs to learn how JVs are set up and operated and how they differ from other types of investments, such as acquisitions, alliances, greenfield upstart- and minority investments. There are legal aspects to understand, as well as structural details.

A JV is formed when two or more investing partners set up a business entity (see Figure 1 for a typical JV structure). These partners share the rewards and risks of the JV. Both parties sign a JV agreement or shareholder agreement, which formalizes the deal and protects each partner's rights and interests

It's also important to understand some fundamental concepts about JVs:

Separateness. The JV is legally separate and distinct from each investing partner's organization. But separate doesn't mean independent since the partners control the board and management committee and are the major, or only, investors in the JV.

Fiduciary duty. A partner's leaders can form part of the JV's board and management committee. However, these individuals have a fiduciary duty to act on behalf of all JV shareholders rather than only in their own organization's interests.

Joint control. No one partner can control the JV; control belongs to all partners together. But joint control does not necessarily mean equal control since control is determined by several factors, including the value of each partner's contribution to the JV.

Veto. With joint control, each partner plays an active role in the JV, at least at the strategy level. This means each partner has the power to veto high-level strategic decisions.

> **We have many JVs, but few people that have worked their set up and understand the different types of JV's. So, rule number 1 for us it to set up an HR meeting to go over the fundamentals, as explained in this paper. It just saves so much time and frustration down the line.**
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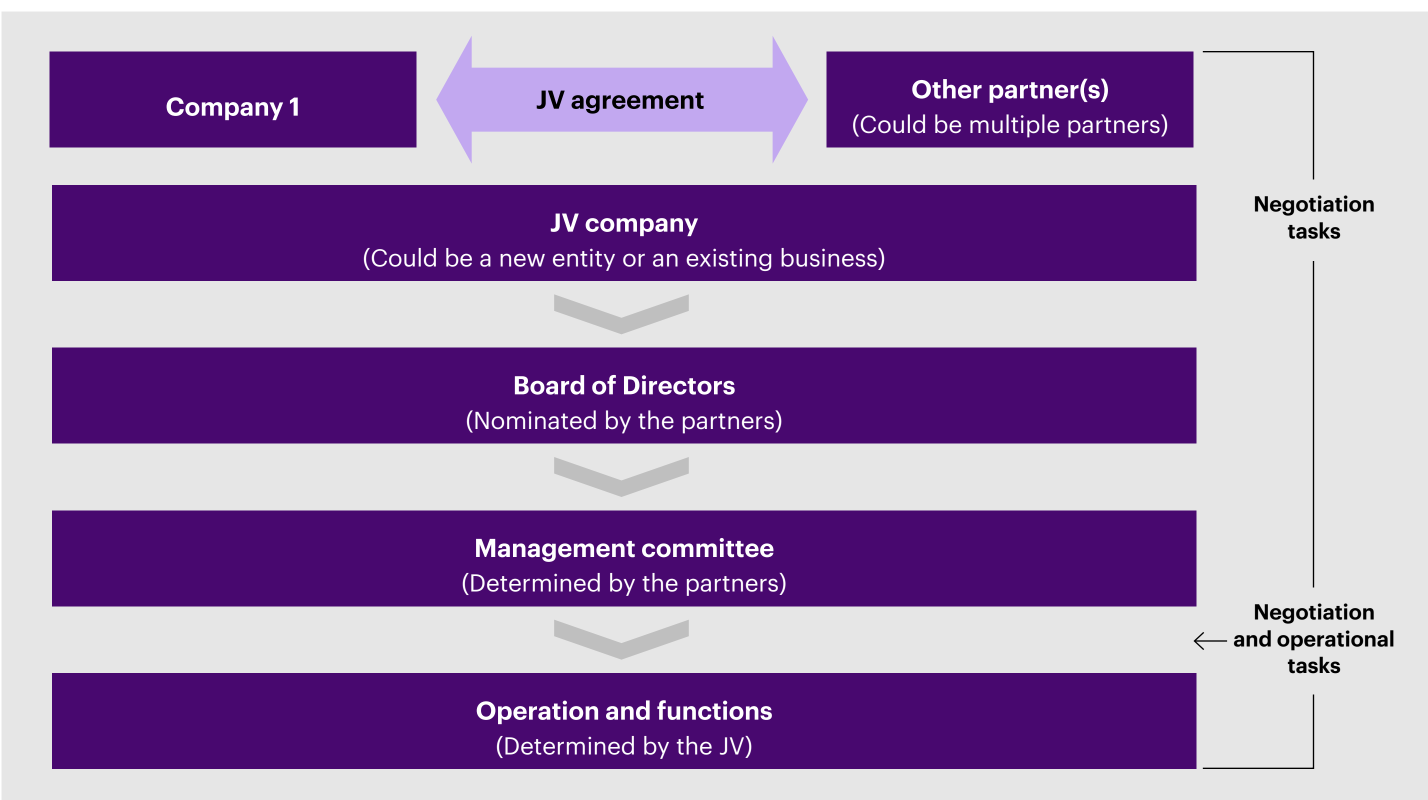
> Client comment

Figure 1. A typical structure for joint ventures



Develop a viewpoint, define role

During the JV journey, it's easy to lose sight of some of the issues sure to arise and solutions consider. A systematic approach can be enormously helpful. Drawing from experience in consulting on many JVs and interviews with 20 JV leaders worldwide, we've created a tool to help JV partners anticipate and address the major issues.

The tool in Figure 2 focuses on three key, interrelated elements and the major factors and issues to be considered for each:

- Strategy
- Structure and Operational Details
- People

T**he Strategy** section highlights the business-wide issues that need to be considered first. In the strategy development phase, well-intentioned advice can be very confusing. Due to the wide variety in the types, structures and operations of JVs, the foundation on which one JV is built is not comparable to another. What works in one situation might be inappropriate in the next. HR professionals must understand the strategy section, to place what follows in the right context for each JV.

The Structure and Operational Details section gets to the details of the working relationship, while the People section addresses the employee part of the equation, including the leadership issues discussed below. During the deal negotiations phase, these details must be worked out, not deferred to a later date. This is critical for two reasons: 1) The operational leaders need as much clarity as possible to run the JV and 2) practically speaking, getting partners back together later to review issues that some partners might have deemed settled is not a simple process.

Using this template, HR can determine the scope of its role from a business, people and functional perspective. Continually reviewing the issues, questions and potential answers — within your company and with the JV partners — will help you set up a stronger business. And as the JV environment is dynamic, the solutions often change when the facts and circumstances surrounding the JV change.

Recognize the importance of leadership

People issues are at the heart of a successful JV. The skill sets of the individuals working on and leading the JV are crucial. The factors of joint control, fiduciary duties, vetoes and separateness mean that partners must collaborate to make decisions. This calls for leaders who can build trust with the partners, collaborate with them and influence their decision making, without dictating or dominating the discussions. That's why trust — important in all business dealings — is critical in a JV environment, where conflicts regarding strategy and operations are inevitable. When partners negotiate on a foundation of trust, they can more easily weather these conflicts together.

Be smart at the start

Many of the problems that arise in JVs can be traced to the early-stage negotiations: the leaders selected to

represent each company in the JV, the leaders' preparation, and the advice or experience that guided them.

The following tips will help you avoid some common pitfalls early on.

- Select JV leaders with the skill sets necessary to represent your company. They'll be responsible for identifying and assessing the business partner.

> **Selecting leaders is critical, but full of potential potholes. We've experienced situations where what we thought was a great opportunity, just did not translate to the individuals. Many reasons can be cited— don't want to relocate because of family/personal reasons is common. In one case, we were on our 5th round for two key positions before we finally got the roles filled. The process is time-consuming and causes delays.**
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> Client comment

- Pick the partner first, the business second — and do a comprehensive due diligence review.
- There is no single path to JV "nirvana," but there are universal principles you can apply to identify and resolve many of the common problems. Prepare well, understand the people and business context of each JV and study the issues and problems related to the specific situation at hand.
- Don't automatically transfer findings and learnings from one JV to another.
- Address working relationships during the negotiation stage and monitor them throughout the lifetime of the JV.

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This issue of trust comes up again and again. It's so important to have at least one leader who's involved in both the negotiation and then operational part of the JV. One of our JV partners said, 'the people we built up trust with at the start are not the same people that are running the JV so that means that trust needs to be rebuilt and that's not as easy as it sounds.

Client comment

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- Don't leave the process after the JV is set up. Continue to track and manage the progress and careers of employees you expect to return to your firm.

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In the case of temporary transfers, we need to make sure those transferred have a path back to the 'mother ship' and we use mentors/ coaches to ensure they don't get lost in the system. The JV is independent after all and we have to have a central tracking mechanism (where they are and for how long and the reporting relationship) that someone has to own at HR. But it's a challenge since we transfer them for a minimum of three years. It takes that long for the transferee to build trust and transfer their knowledge.

Client comment

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The role of HR in the JV process varies according to how it positions itself within the company. You could be an integral part of the JV team, involved in selecting the leadership or you could have no role at all (particularly if you let the other partner determine HR's role). Armed with the right information and tools you stand a much greater chance of being a key player in your company's next joint venture.

Strategy

Major issues and key questions	Factors and variations to consider	Comments
What is the nature and type of JV?	Is it a) a new entity (no existing legacy business), b) a new entity (formed by combination of existing businesses) or c) an existing entity? Will this involve divesting an existing business from a larger business and rolling all or part of it into the JV?	Distinguishing among these three types of JV is the critical first step because the type of JV will influence all subsequent decisions. And misunderstanding the differences among the three sows the seeds for future confusion. Also, a simultaneous divestiture and JV setup can pose enormous logistical problems for the partner experiencing these events.
Who are the potential partners in the JV?	Are we dealing with a public or private corporation? A private equity or family business? Have we worked with the potential partners before? Do we know how they operate? How do they view the importance of issues we hold dear (e.g., brand and reputation)?	Firms that operate multiple JVs will likely have different partners for each JV. Each of these partners will have its own unique culture and will bring this cultural bias toward the negotiations and into the day-to-day working relationships. This makes extrapolating cultural learnings from one JV partner into another of limited benefit.
Who are our leaders? Do they understand the implications of the business being formed as a joint venture between partners?	Who are our leaders in negotiations? Are these leaders intending to join the JV? Do they understand how collaboration will work and the scope of their authority in the context of "joint control"? Can they articulate the impact of "separateness" on decision making and their fiduciary duty to the JV? Where are the "veto" issues likely to arise?	The collaborative nature of JVs influences the partners' choice of leaders to represent them, and any potential change of leaders can change the dynamics of the working relationship. For example, if trust is built up between leaders during negotiations, there is no guarantee that this level of trust will transfer to a different set of leaders.
What is the global nature of the JV?	Is it domestic or international? If international, how many countries — one or many? Is the JV in a familiar market or an emerging market? What do we know about doing business in these markets?	An international JV is often the preferred way for a company to enter a new market or geography because the risk is shared between the partners. It can also be the fastest way to forge political, regulatory and business relationships.
What are the strategic and business reasons for pursuing this deal?	Why are we doing this deal? What is the strategic rationale and business fit? What are the potential financial returns? Do the partners share our goals? Do we have similar interests? Can we write these down and agree to them?	Some common business reasons for pursuing a deal include industry consolidation, entry into new markets or new products, access to research and development, and access to new talent. Other reasons include the need for a partner to share or reduce risk, or limit its capital investment.
Why are we considering a JV and not an outright acquisition, minority investment, alliance or greenfield start-up?	Why is a JV the best option? Have we discussed the other options and, if so, what were the conclusions? Is this an auction, i.e., are there other bidders on the JV?	The "birth" of a JV is not straightforward. For example, many deals start off as one of the other options but then turn into JV discussions (or vice versa). Also, we need to consider if this is an exclusive discussion between partners or if there are other bidders because this might restrict the ability to gain detailed information. These potential deal structure twists and information restrictions are complex to deal with, and have a significant impact on the messages sent to talent slated to join the JV.
What is the business plan, and when will it be finalized?	What are the JV's mission, vision and strategy? What is the desired culture, and how will this be achieved? Have we discussed this in depth? What are the partners' views? Can we write down these views and agree on them? When will the plan be finalized, and who has the final sign-off?	While the JV partners work on this together, it is critical to resolve as many matters as possible early in the process. Resolution here will help guide the JV operational leaders and give them more clarity in running the JV.

Strategy		
Major issues and key questions	**Factors and variations to consider**	**Comments**
What is the impact of differences between national culture and organizational culture?	How will this affect our negotiation strategy? Will it have an impact on the leaders we have selected to negotiate? Culturally, do all of the counterpart team members contribute to discussions, or do they defer to one senior leader? Do the partners welcome questions or see queries as disrespectful, undermining their role and authority?	Basic differences in culture (both national and organizational), style, openness and approach can often lead to differences in willingness to share information in negotiations and meetings. And, once operational, these cultural differences frequently result in an inability to resolve the inevitable disagreements that come up in JVs.
What is the intended ownership level?	Is this a majority investment (own more than 50% of the JV) or minority investment (own less than 50%)? Is there a path to ownership or no path? If so, what is the timing for the ownership changes?	The ownership issue will normally determine the level of control one partner has over the other. Forming the JV might be the first step in either an outright acquisition or a sale of the interest.
What is the degree of management control?	What do we believe the degree of control to be, and what needs to be agreed on regarding the mechanism, extent, focus and timing of control issues to support our belief? Are any of these issues intended to change over time and, if so, when? Do our auditors agree with our interpretation of "control"?	This reflects the degree of control one partner has over the other and the JV itself and is closely related to ownership stake. Also, the auditor's interpretation of control can lead to a different accounting impact than initially anticipated, which in turn can dilute the anticipated benefits of the JV.
What is the intended exit strategy for each partner?	What is the plan and timing? What triggers dissolution (e.g., business conditions change or parties change)? What is the process if one of the JV partners is acquired or gets into financial trouble? Are our time horizons similar, or are there significant differences?	Many JVs have a finite lifespan, so we need to know if we are going to exit by a certain date. The common exit options are to buy out the partner, to sell the interest at a later date to other partners or investors, to fully own the firm or to float it to the public.
What will each partner contribute to the JV?	What are we investing, and what are the "people" implications? Is this an existing business being turned into a JV, or will it be a new business? If the answer is "new," does it start as a new business, or will existing businesses be combined into the new firm?	The common contributions are capital, intellectual property, assets, people or most likely a mixture. These can come from a whole business or part of a business.
What due diligence will be done?	What is the process for doing due diligence? Who will do it, and how will it be conducted? What planning needs to be done for the JV as part of the due diligence?	This can be done at two levels: on the partner and on the business. There is often confusion as to whether this gets done and, if so, how and at what level.

Structure and operational details

Major issues and key questions	Factors and variations to consider	Comments
When will the JV be open for business?	What is the intended start date? Or is the JV currently operating as a business? Will all employees be legally ready to work by the intended start date? Who will own these issues?	This is closely tied to the workforce plan.
What are the details of the working relationship?	What is the process to follow to get involved in decisions? And what decisions need to be escalated to the partners? What tactical matters can be solved within the JV itself? Do the JV leaders have clarity on not just what they will do, but also how they will do it within the JV context?	This gets to the heart of how the JV will function and covers day-to-day operational matters, including dispute resolution procedures. As in any business, disagreements are inevitable once the JV is operational, so clarity here provides a mechanism to develop and maintain trust and build the working relationship between partners at the start and throughout the lifetime of the JV. Disputes that can't be resolved might end up going through a formal arbitration process, which will inevitably strain the relationship.
What is meant by integration, and what level of integration is planned?	What do we mean by this term? What is the proposed level of integration, and will this change over time? If the intent is to fully own the JV at some stage, what can be put in place, short and long term, to facilitate later integration?	Often, majority JVs can be partially integrated, but minority JVs pose a problem. Integration decisions are closely tied to the future ownership and exit strategy decisions. Also, integration can just mean sharing skills and practices, so it's important to clarify the definition of this term to avoid following typical acquisition integration practices.
What is the organizational structure for the JV business?	What will the organizational structure look like? What are the basic model and related reporting relationships?	The common structural options are a matrix, a flat or hierarchical structure, or a network-based structure. The structure can also vary by business, product line or geography.
What do we need to do to help protect our investment and company reputation? What are the key financial, legal and public relations risks associated with the JV?	What are the key governance, financial and compliance processes and controls to implement to support or protect our investment and reputation? What needs to be reported, by when and by whom? What are the partners' requirements, and is there any duplication or overlap?	International deals pose special problems, especially in emerging and rapidly growing markets where there might be significant differences in standards in areas such as health and safety and human rights. Compliance with the Foreign Corrupt Practices Act can also pose additional problems. All these can be costly to investigate or costly to fix, but the partners can be held responsible for any JV violations.
What best practices might we instill in the JV?	What can we share to give the JV a fast start? For example, can we help with best practices in areas such as talent management processes, succession planning or pay-for-performance plans?	This process is optional, whereas the organizational processes above are essential. There is often an eagerness to share best practices, but too much immediate focus on all these processes can overwhelm the JV and distract employees from the business of running the JV itself.
Will the JV need any transition or ongoing support services?	Does the JV need temporary or permanent help to set up technology systems, payroll and benefit plans? If so, who will furnish these, and what will the cost be? Who will manage the agreement?	While often needed, contracting for these services can be costly and time-consuming. They also must be set in the context that the partners are not "outsourcers" and don't do this as a professional service, and therefore the quality of the services can suffer.

People

Major issues and key questions	Factors and variations to consider	Comments
What key roles and positions are needed at the JV?	What types of roles are needed, along with their intended levels of authority? What are the reporting lines?	The typical leadership roles are chief executive officer, chief operating officer, chief financial officer, chief HR officer and general counsel, plus specialist or technical positions specific to the JV business.
Who are the key leaders, and where will the talent come from to fill these positions?	Who are the intended leaders to fill these positions? Who will join the JV board and the management committee? Are there any restrictions on the selection of the leaders? What are the partners' views? Do our leaders need training on JVs and their fiduciary duties to the JV itself?	Some of the leaders will be part of the negotiating team and therefore will be familiar to the partner, but most will not be familiar because they will be selected after the decision to proceed with the JV is made.
What other key positions are needed, and where will the talent come from to fill these positions?	What talent is available to fill these positions? Are there any significant constraints, e.g., local regulatory requirements, language concerns, or safety and security issues? What are the partners' views?	The career implications for the individual must be thought through, especially if there is a significant career risk (for example, no "return ticket" to the partner). And combining businesses will likely highlight duplication of roles and talent, which might require termination of key talent if no alternative employment exists within the partner.
What are the likely transfer issues related to the talent?	Do any leaders need to be convinced to transfer? Are there any obvious family reasons prohibiting transfers? Do we have alternative candidates if the selected talent turn down the opportunity? Are there any dual employment issues? Are there any local legal restrictions on the number of transfers at any point in time?	Transfers need to be categorized as permanent, temporary, contract or seconded employees, because the issues are different for each group. But many transfers that look good on paper do not take place because leaders do not want to transfer out of the company into a JV.
What are the proposed leadership pay levels, and are there any issues regarding stock plans?	What pay packages are being proposed, and are there any significant differences in the partners' views? Is stock currently a major part of the talents' packages? Will the JV be able to offer stock and, if so, how much? If senior leaders are coming from different partners, just how far apart are they in total compensation?	Pay issues are often contentious, especially if leaders come out of a firm with significant stock options, and the JV can't offer comparable incentives.
What employment contracts are needed?	For each individual transferring, what are the key terms, conditions, pay, bonus and benefits, and how will this change? Are there any local legal restrictions? Who will hold the contracts: the partner firm, the JV or both?	Some countries require formal employment contracts as a legal condition of employment, whereas others do not. In dual contracts, the employee has a contract with both the partner and the JV.
What compensation and benefit plans and programs will be set up?	Do we adopt new plans or roll over each partner's existing plans? Or do we adopt a mixture? What is the expected time lag between setting up the legal entity and being able to process payroll and benefits? What other key employment terms and conditions do we need to consider?	Agreeing to and then setting up plans and programs can be extremely complex and time-consuming. Decisions are often constrained by local laws requiring that employers maintain some level of comparability with existing benefit packages.
What is the workforce strategy and plan?	How will the JV be staffed? From top to bottom? Who will decide the functions and salespeople and deal with overlaps? Are there reductions-in-force implications? Who pays the severance cost, and when?	The operational start date can't be before the legal entity is in place, the workforce is established and employment contracts are in effect. Decisions here generally come after key leaders are aboard, since they will want to set the direction for the JV.
Will the JV need any transition or ongoing support services?	Does the JV need temporary or permanent help to set up technology systems, payroll and benefit plans? If so, who will furnish these, and what will the cost be? Who will manage the agreement?	While often needed, contracting for these services can be costly and time-consuming. They also must be set in the context that the partners are not "outsourcers" and don't do this as a professional service, and therefore the quality of the services can suffer.

Structure and operational details		
Major issues and key questions	**Factors and variations to consider**	**Comments**
Are there any union/works council/works committee issues?	What groups currently exist at the partner and at the JV? Do we need to recognize any of these groups anywhere in the world? If so, who will negotiate with them, and what is the due process?	Working with these groups within the overall context of confidential deal discussions can be difficult, and expert legal advice will be required to navigate the issues — especially for global deals with multiple groups.
Is there a formal tracking process in place for all temporary transfers and secondments?	How do we maintain connections with the JV employees who will eventually return to us? Who will set up a tracking process and own it? Can we offer JV employees a “reverse training” option?	Partners are often challenged in maintaining meaningful contact with employees, given that these employees need to focus on the JV itself. Reverse training means offering training for the employees in the JV at the partner business. Such training can be a significant selling point for leaders in emerging and developing markets, e.g., China, Russia and India. When leaders in these countries are looking to select from several potential partners (i.e., in an auction situation), the partner that offers reverse training programs sometimes enjoys an advantage.

Additional client comments

"Be wary of working with private equity firms; many have no deep knowledge of HR and what it takes to run an HR function. Invariably that will fall to the more established firm to figure out. HR IT systems is a nightmare, not just getting it set up, but with all the different rules and regulations in each country regarding employment laws, data privacy, etc. Be especially careful in transferring personal data outside a country and back to the partner's HQ. You don't want to run afoul of the authorities; not only can that push back the start date, but maybe end the JV itself."

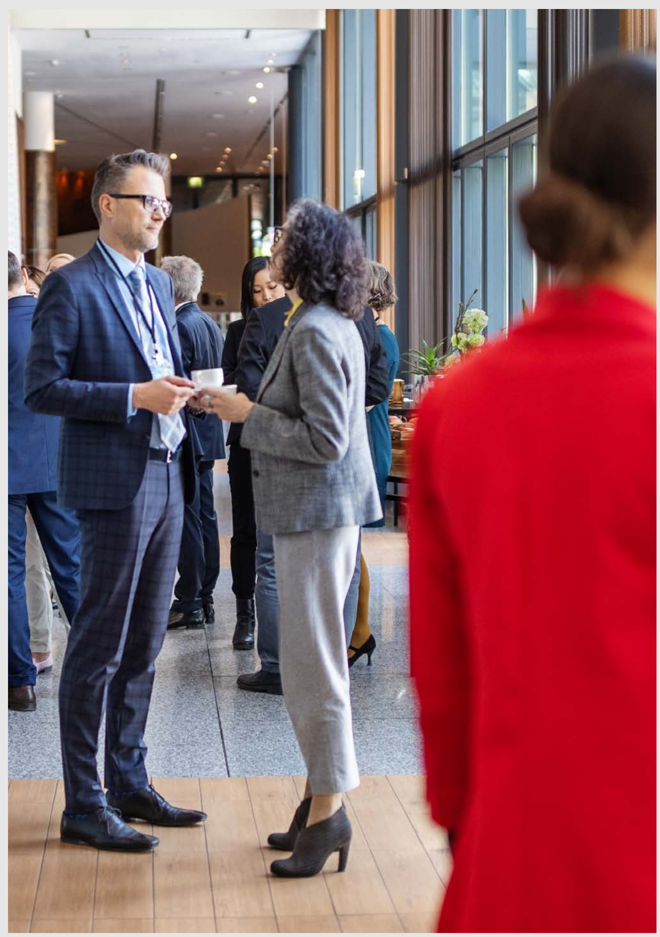
"In JVs you have three options: outsource to one of the JV partners, insource, or hire a PEO (Professional Employer Organization). But even the PEO is a challenge in terms of scoping and pricing and the detail they require to provide a quote for services."

"For permanent transfers, do your homework and quantify what this means for leaders' and employees' payments. We've been surprised by the termination and rehire process whereby severance and other payments are triggered."

"From an HR perspective, there are some common issues we address up front with the outcome dependent on how involved the JV partners want to be, and how experienced they are. The most common are setting up the governance structure and policies, agreeing on clear decision-making procedures, getting employment contracts for direct hire, temporary transfer and expats, and setting overall compensation and benefits strategy, including short and long term incentive plans."

"Leader compensation is always tricky if they've been with us a while, with the most complex being the equity issues and incentives and the various programs we have. Getting long-term incentives in place is a challenge as they will constantly be comparing what they have, what accrued incentives they have and how unvested equity will be dealt with. And it always turns out to be an individual conversation and negotiation, because each leader is starting from a different position."

"My advice to HR: get ahead of the game, prepare an opening position and strategy and get others to react to it. Have a database of learnings from past and current JVs. This will be invaluable, because you will be dealing with others that have zero experience in JVs."



Common JV Terms

The following terms relate to the organization and business activity:

Acquisition: One company buys another. Some acquisitions are set up as stand-alone entities, where no third party exists. The buyer bears all the rewards and risks of the acquisition.

Greenfield or start-up operation: One party opens a new business on its own, and the operation is part of the original organization. All rewards and risks are borne by this one party.

Joint venture: Two or more partners get together to set up a business as a separate legal entity (a third party). The partners share the rewards and the risks of the venture.

JV agreement or shareholder agreement: The contract between the partners, this details the setting up and operation of the JV and covers such issues as governance, operating model, profit splits, contributions, change of control and termination provisions related to the JV.

Minority investment: A company invests in another firm but has no direct control over that investment, and no third party exists. The lack of control and existence of a third party distinguish a minority investment from a JV, irrespective of the level of investment.

Negotiation period: The period begins when partners initiate discussions about setting up the JV and ends when the JV agreement is signed. This typically takes place with a high degree of secrecy and confidentiality.

Operational start date: This refers to the date on which the JV opens for business.

Partners: These are the investors/owners of the JV.

Strategic alliance: Two or more parties undertake a business venture. In contrast to a JV, this is not a separate legal entity but merely a business agreement between/among the organizations. Employees work for the parties involved in the alliance, which remain as separate legal entities.

The following are employee-related terms:

Employees: This encompasses all the employees who work in the JV, regardless of job title, category or status.

Leaders: This can refer to the individuals who negotiate the JV and those employed to run the JV. They are sometimes the same people.

Permanent transfer: An employee leaves one of the partner organizations to work in the JV and has no return path to the partner company.

Secondment: An employee is employed by one of the partner companies but works for the JV. The partner pays the secondee employee's salary and charges a fee to the JV.

Talent: Employees whom the partner companies identify as being significantly more valuable to the business than others.

Temporary: An employee leaves one of the partner companies to work in the JV; they are employed and paid by the JV but will eventually return to the partner.

Term sheet: A non-binding document that outlines the key terms and conditions of the proposed JV. Put in place before the JV agreement, it typically includes information such as the purpose of the JV, the contributions of each party, the management structure, the financial terms, and the exit strategy.

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