

Dispute resolution clauses made for joint ventures

Dispute resolution procedures in joint ventures are important. The potential damage and disruption a failed joint venture or alliance can cause to a business is not something that's commonly tracked, but it is something that is very noticeable when it actually happens. Designing clear and fair dispute resolution procedures can be your best bet against such damage.



Things don't always go to plan. It's hard enough keeping a company on which you have full ownership on track and performing. Throw in one or more competing shareholder interests and their issues, and it is very easy to see how partnerships in the form of joint

ventures (JVs) and alliances can quietly de-stabilise. Whether the disturbance is intentional by one party, completely unintentional or due to external forces, a clear and fair dispute resolution procedure is critical to minimising the damage and duration of the disruption. The governance structure is the first line of defence in a disturbance that is heading for a dispute.

Governance attracts a lot of attention during the design phase of a partnership, more so in an effort to address the issue of lack of control than planning for a dispute. Partners become comfortable with governance eventually, whether by design or by increased familiarity with the other partner, and the deal proceeds.

Even with all this attention at the design stage, we commonly find issues with governance structures when working on underperforming partnerships or those in dispute. It might be that it is too onerous, isn't close enough to the day-to-day operations of the business, or patronised by representatives of shareholders who are not totally dedicated to the partnership.

Ineffective governance isn't something that has to exist. However, it usually does exist in partnership arrangements, for a variety of reasons. It's only in dispute situations that we see if representatives are truly prioritising the partnership's interest, or some other cause. The best way to avoid a situation where someone does not put the partnership's interest first, is to set clear and fair dispute resolution procedures. Then, it is a simple case of following what has been agreed upon ('simple', so long as the procedures are effective).



Dispute resolution clauses in JV agreements or similar documents are often too legalistic because they are usually written by lawyers. The reality is, if your dispute gets to the stage of involving lawyers, then you're already on a slippery slope. Here are some alternatives to consider when designing dispute resolutions in JV agreements:



- **Empower management**

Often, people who know most about the issue are ignored. Unless management of the JV or alliance are the issue to begin with, it is wise to ask these people what they consider to be the real issue and how it might have come about. Consider empowering them to propose a solution that might be acceptable to all parties.



- **Design delegations of authority thoroughly**

Try to design a governance structure that empowers people with the right skill and expertise to make decisions, rather than escalate everything to the higher authorities. Lower levels of management are often closer to the issue, and farther from outside influences, so they can be more objective and independent (if not representatives or secondees of a shareholder) in their decisions.



- **Have a release valve**

Sometimes, issues arise due to problematic relationships between people. Consider the appointment (at the time of the dispute) of people from the disputing shareholders who are experienced but don't know each other, to try and resolve the issue. Choose these people carefully.



- **Refresh the whole team**

Consider removing conflicting parties from the situation and replacing them with new leadership. Partnerships don't last for ever and people wear out, so consider if a dispute is actually a good chance to refresh.



- **Appoint an independent consultant**

After a few rounds of trying to resolve a dispute internally, consider the joint

appointment of an independent advisor external to all stakeholders, to look for a common ground between the parties and offer a rational solution.

These are a few ideas that can help avoid the need for lawyers. Amicable resolution is better for the longevity of partnerships. At the end of the day, as long as the business still makes sense and you are not at an exit stage, it's better to work things out rather than battle them out in court.

Who we are

We are a team of joint venture practitioners specializing in joint ventures at all stages – with their specific set of potential difficulties – in their life cycle. Delivering international best practices with extensive industry and geographical experience, KPMG is positioned as the only major advisory firm with a dedicated Joint Venture Advisory Practice.

The KPMG Joint Venture Advisory Practice can help you assess your current and future needs, and restructure your business to minimise risk and maximise commercial performance, irrespective as to whether you have many partnerships already, or are considering embarking on more in the future.

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