

Small Business Assistance Office

Joint Ventures

View our [Should You Enter into a Joint Venture?](#) in our [business video playlist](#).

The formation of an entity joint venture is a complicated process and will definitely require the parties to obtain and apply legal, accounting, and line-of-business marketing and management advice.

There are, however, some areas that relate to a possible joint venture that should be considered even before seeking professional advice. Here are five of them.

1. Look carefully at whether a joint venture will give you the results you want. In some industries and markets joint ventures may not provide quick and/or sustainable results. For example:
 - Research and development joint ventures may not be the best choice in industries where there is very rapid dissemination of new technology and where the speed of new product introduction precludes a “winner take all” long term market share for any one firm.
 - Product development joint ventures may not be the best choice in industries with high sunk costs for development and testing. In those cases it may be less costly and more efficient to be a second mover not a first mover in a market.
 - Using a joint venture to overcome barriers to entry in a given industry may not work in the presence of incumbents with substantial pre-existing market power.
2. Consider all the potential joint venture parties’ tolerance for risk. All parties will sustain some degree of transaction costs and opportunity costs in both the formation and operation of the joint venture. No party is guaranteed the success of the joint venture or that it will leave the venture better off, or even as well off, as when it entered. When the risk tolerances of the parties do not align, the joint venture will want to bring them into alignment through the structure of the joint venture (for example, by using a structure with limited liability) or through actions of the joint venture (for example, by indemnifying the parties for loss).
3. Each party should be explicit and consistent in stating its desired outcome for the joint venture and the relationship of that outcome to the joint scope of work and the contribution of assets. This will avoid the problem of “adverse selection” where one of the parties has a hidden agenda at odds with the purposes of the joint venture as understood by the other parties. It will also avoid the costs associated with project “hold up” when one party balks mid-project at the continued use of one of its assets.

4. Consider which form of organization (Corporation, Limited Liability Company, Partnership) best meets the needs of the parties and joint venture itself. The choice of entity will have tax consequences for the joint venture entity and the parties as well as affecting the limits of liability, and the joint venture's ability to secure debt capital from financial institutions and equity capital from investors. DEED's [A Guide to Starting a Business in Minnesota](#) available online provides a chapter on the tax and non-tax consequences of the choice of business entity.
5. Consider the best "mix" of contributed assets (cash, equipment and other capital assets, personnel, intellectual property) and in what proportions it will be contributed by the parties. This is an area where unintended or unanticipated consequences can easily arise: for example, the contribution of an appreciated asset can be a taxable event to the contributor; the use of personnel of a party can give rise, under Minnesota's "loaned servant" doctrine to worker's compensation liability for both that party and joint venture; use of contributed intellectual property will require a license for use to the joint venture.

In this same line of thought, consider also:

- How will non-cash assets be valued for contribution?
- Can a party contributing cash seek repayment at the termination of the joint venture in addition to any beneficial results of the venture?
- Will the distribution of profits and losses be in proportion to the parties' economic interest in the joint venture?

In short, there are five areas for consideration in thinking about a joint venture:

Suitability of the Joint Venture

Risk tolerance of the parties

Agreement on purpose and scope

Form of the Joint Venture

Asset mix



[Small Business Assistance Office](#)

Department of Employment and Economic Development

Great Northern Building, 12th Floor, 180 E. 5th Street, St. Paul, MN 55101-1678

651-556-8425 | 800-310-8323 deed.mnsbao@state.mn.us

An Equal Opportunity Employer and Service Provider