

Article by Max Hudson, Company & Commercial partner and Andrew Bailey, Company & Commercial solicitor at Payne Hicks Beach first published on 11 September 2013 at SMEWEB online [http://www.smeweb.com/index.php?option=com\\_content&view=article&id=4427:joint-ventures-an-opportunity-for-growth&catid=61:features&Itemid=106](http://www.smeweb.com/index.php?option=com_content&view=article&id=4427:joint-ventures-an-opportunity-for-growth&catid=61:features&Itemid=106)



## [Joint ventures - an opportunity for growth?](#)

Written by Max Hudson (partner) and Andrew Bailey (solicitor) from Payne Hicks Beach Solicitors  
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**The recent announcement by Vodafone and Verizon shows that joint ventures are becoming increasingly popular.**



**Vodafone plc** ([LON:VOD](#)) has recently announced the planned sale of its stake in **Verizon Communications Inc** ([NYSE:VZ](#)) to its US joint venture partner for £54 billion. Both as a transaction and as a success it is astonishing. However, even basking in glory, Vodafone is being asked where this huge sale leaves it for the future.

Joint ventures are becoming increasingly popular as a way for companies to grow and develop their business activities, particularly in the area of international activity.

In particular, entering into a joint venture arrangement is seen as a potential way for a company to gain access to new markets, countries or sales channels, or the opportunity to utilise technical expertise or to exploit resources of others with someone who knows the target.

### **Assessing the opportunity**

Obviously the commercial drivers for any joint venture need to be right, and it is a decision that needs to be considered carefully. Care needs to be taken both in terms of the aims of the joint venture and also identifying your joint venture partner.

Smaller businesses often want to set up joint venture arrangements with larger partners so that they can exploit the larger company's resources and networks. Likewise a larger business may be attracted to a smaller business which may have IP rights or connections which it cannot exploit alone.

In my view, in order to be a commercial success, any proposed joint venture should fit in with your

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company's overall business strategy. Where and how do you want to expand?

The joint venture needs to be clearly defined and established from the start. Both parties need to understand the objectives, the level of expertise they are bringing to the table and the investment or assets they are contributing.

The relevant due diligence will need to be carried out on your proposed partner. It is important to ensure that your partner is financially viable and that they are equally committed to the project. You want to be confident that the relationship is strong enough to grow as envisaged and need to address:

- how the joint venture is to be established;
- how it will be controlled and managed;
- what financial or other asset contributions will be made by each partner;
- how the profits will be shared;
- how assets created by the joint venture are dealt with;
- how disputes that may arise are resolved; and
- what the exit process is to be.

## Structure

There are numerous ways of structuring joint ventures, and which is best depends on the jurisdiction involved and often tax treatment. JVs can involve a simple partnership (unwise because of unlimited liability), LLP, LPs, as well as companies. They can be set up in one party's home state, or an offshore jurisdiction. Horses for courses here.

## Risks

Any JV is subject to the same risks:

- Do the parties follow the rules? Is there a Bribery Act issue?
- Do you understand the market you are entering?
- What if it goes wrong? What recourse do you have (perhaps in a country without a sophisticated legal process)?
- How and when do you end it? Can you be surprised by a forced sale of the JV?
- What happens on a change of control?
- Are you putting your IP rights at risk? Could someone walk away with them?
- Can you get your money back?
- Do you really know what is going on?

The exact structure of the joint venture will have an impact on how profits are distributed, and importantly how the income and profits are taxed in the hands of the recipient.

Therefore, it is necessary to do more than to obtain the right advice and to put in place clear legal agreements between the parties. The agreements will set out the basics but the questions also are: who are you dealing with? Where? What are the risks?