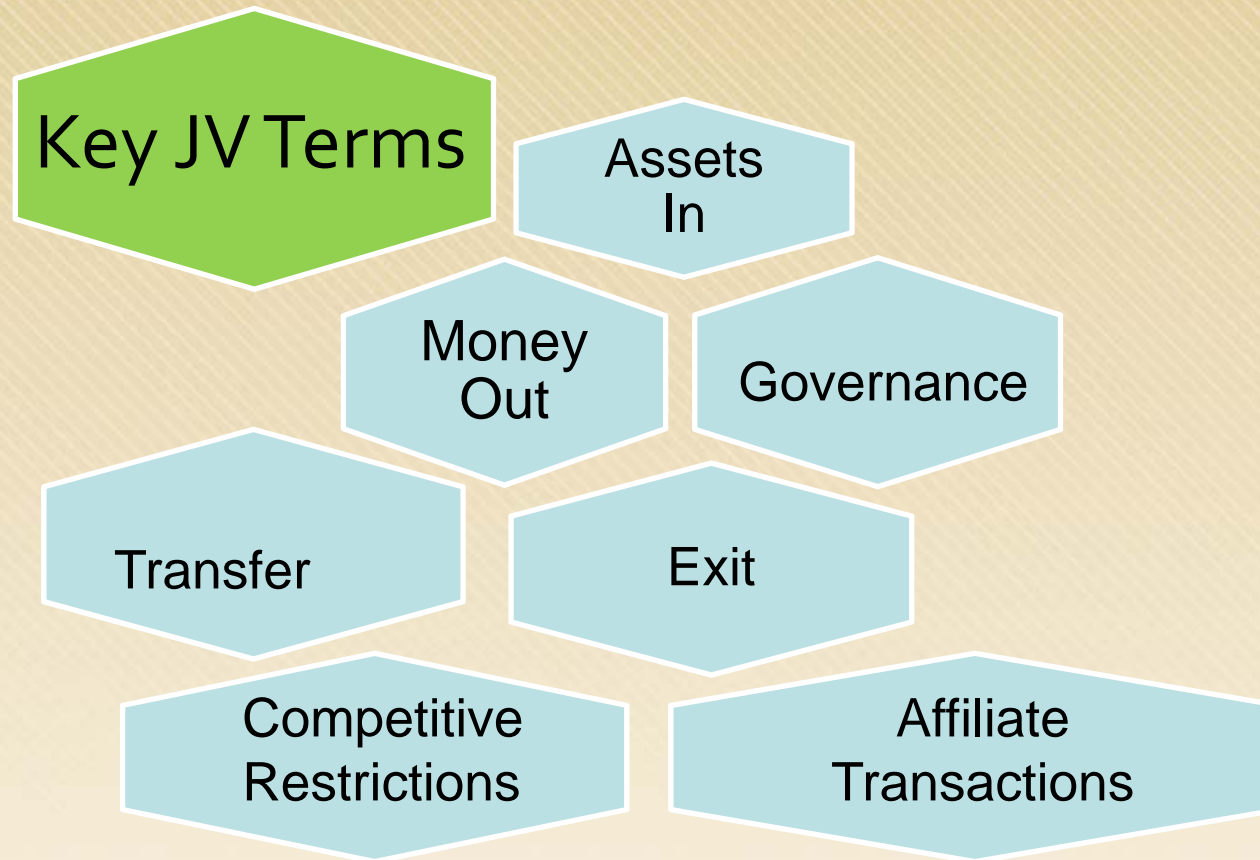


Nuts and Bolts of Equity Joint Ventures

Association of Corporate Counsel, Charlotte Chapter
April 2, 2014

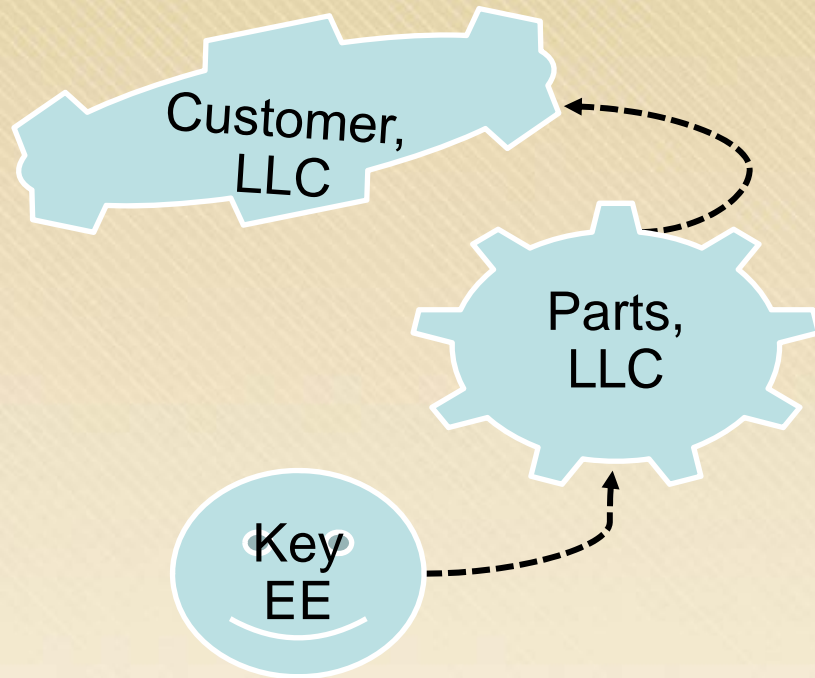
*Presented by:
Karen Gledhill
Matthew Churchill*

7 Basic Structural Considerations

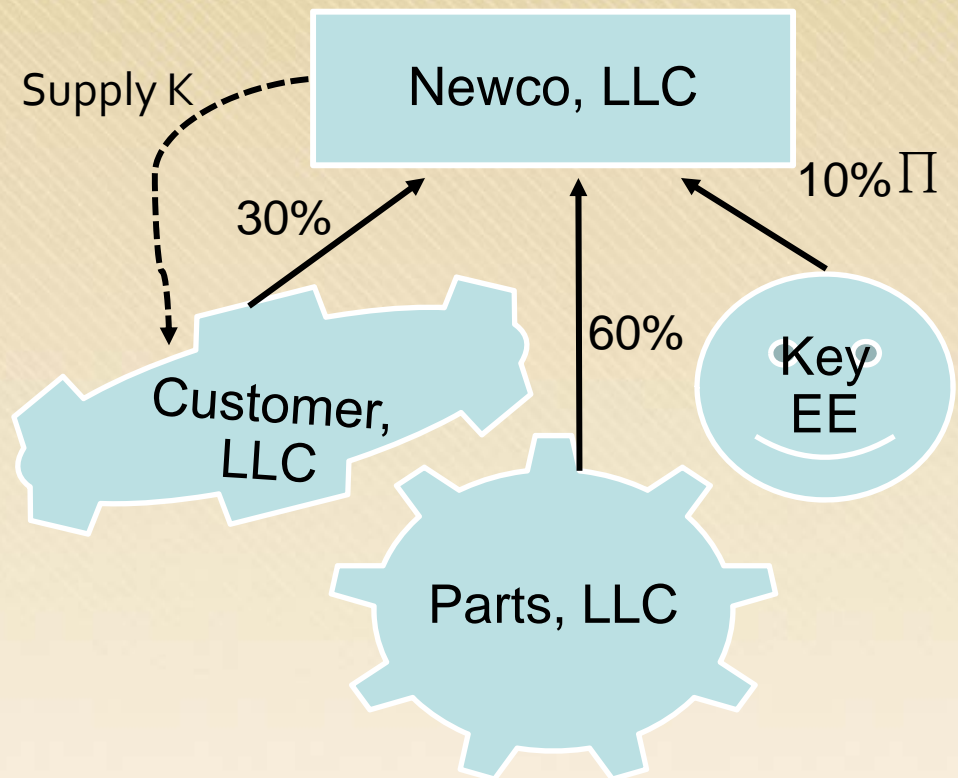


JV Scenario

Current Relationship



Joint Venture



Assets In

- Business operating assets
 - Tangible Assets (free and clear of liens)
 - Intellectual Property (contribution/license)
 - Key Permits
 - Key Talent (Employment Agreements)

Assets In

- Operator Concerns
 - Tax-free Contribution
 - Valuation of Business
 - Debt & Key Contracts Assumed
 - Investor Cash Received
 - Commitment of Key Employee

Assets In

- Investor Concerns
 - Business assets contributed free and clear
 - Protection from pre-closing liabilities
- Employee Concerns
 - Employment Agreement/Benefits/Taxes

Assets In

- Address Working Capital Needs
 - Line of Credit/Member Loans
 - Working Capital Contributions per Budget

Assets In

- Address Future Capital Needs
 - Ability to Issue Equity/Preemptive Rights and Anti-Dilution Protection
 - Mandatory Capital Calls
 - Voluntary Capital Calls
 - Remedies for Breach of Capital Call Requirements

Money Out

- Structure Waterfall (Freedom of Contract)
- Pro Rata Distributions
- Investor Receives Preferred Return on Investment and Return of Capital First

Money Out

- Tax Distributions
- Profits-Only Interests for Employee
- Cash Distributions versus Tax Allocations
- See Waterfall on p. 13 of JV Handbook

Governance

- Often Manager-Managed
 - Board structures common
 - Consider entities as managers
- Control over Day-to-Day Decisions
- Veto Rights/Super-Majority Votes

Governance

- Fiduciary Duties/Ability to Disclaim and Exculpate
- Affiliate Dealings
- Manager vs. Member Decisions
- Dispute Resolution/Deadlock

Transfers

- Free Transferability
- Outright Prohibition
- ROFO/ROFR
- Drag-Along/Tag-Along
- Indirect Transfers/Change of Control

Transfers

- Estate Planning/Affiliate Transfers
- Focus on Boilerplate
 - Securities law restrictions
 - Ability to obtain guaranty releases
 - Prohibitions on sales to competitors

Exit

- Call Rights
- Put Rights
- Rights exercisable upon breach or termination of key contracts (supply)
 - Capital Contribution/Noncompete/Transfer breaches under LLC Agreement

Exit

- Buyouts of Employees upon termination of employment
- Forced Marketing and Sale Provisions
- Buy-Sell Provisions

Exit

- Valuations may differ due to cause of termination
 - FMV with or without discounts for minority interest and lack of liquidity
 - Lower of FMV and capital account balance
 - Appraisal process and timing of payouts

Competitive Restrictions

- Confidentiality
- Nonsolicit of Employees, Customers and Vendors
- Noncompetition Agreements (tail provisions) or express agreement to allow competition

Affiliate Transactions

- Approval and Negotiation Procedures
- Key to document in detailed separate agreement
 - Avoid single paragraph in Operating Agreement detailing agreement

Red Flags

- Antitrust and HSR Act Implications
- Securities Laws Implications
- Employment/Benefits Issues

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