

# **Joint Ventures, Mergers & Acquisitions, and International Business from an In-House Perspective: An Interview with John Fukunaga**

**Interviewee:** John Fukunaga, Executive Vice President, Corporate Legal Department, and Deputy General Counsel at Sony Pictures Entertainment

**Interviewer:** Timothy Prosky

**TP: Can you give a brief description of your responsibilities as Executive Vice President, Corporate Legal Dept., and Deputy General Counsel at Sony Pictures Entertainment?**

JF: I lead a great team of lawyers, paraprofessionals, and other staff members who work on corporate transactional matters, including M&A and joint venture work, as well as theatrical, home entertainment, television and digital distribution, home entertainment marketing, worldwide television network operations and procurement matters. We also oversee other commercial matters that come up on an occasional basis. Because Sony Pictures is a global company, a lot of the work we do is international, which has become a bigger and bigger piece of studios' business in the twenty years that I've been at Sony Pictures.

**TP: How did you end up working for Sony Pictures? What was your career path?**

JF: I was an associate in the Corporate Department at Paul, Hastings, Janofsky & Walker, in the downtown Los Angeles office. I joined the firm out of law school in October of 1989. I worked primarily on the corporate finance team, but also worked with the banking team. It gave me the opportunity to do a great breadth of deals--M&A, banking, venture capital, public securities, public reporting, working with smaller companies as well as larger companies--and I got a good transactional background as a result. I learned how to structure, run and negotiate deals, while working with some great partners and associates. In early 1994, I heard about an opening here at Sony Pictures, interviewed for it, and actually ended up taking a different job from the one I initially interviewed for. I joined the Corporate Legal Department in June of 1994.

**TP: When working on a joint venture agreement, what are some of the most common provisions that tend to hold up the consummation of the agreement?**

JF: I think it depends on the deal, and your potential partners. It depends on how your priorities and strategies align or differ from theirs, how much each side plans to own and whether the partners plan on taking a more active or passive role. Finding the right partner for you and the particular situation is pretty important. I don't know if "hold up"

is the right term, but one of the most heavily negotiated provisions in my experience has been how the joint venture is to be managed and operated going forward. Things like capital commitment, ownership percentage and overall business strategy are largely agreed upon early on. You won't spend a lot of time negotiating a deal until you have agreement on those core items. As you negotiate the other terms of the JV agreement, the parties' views and expectations about the business will be fleshed out, sometimes leading to differences on how things should be handled. The attorneys often help bridge the gap between the different views and expectations.

**TP: You mentioned that finding the right venture partner affects how the deal is negotiated. How do you find the right partner?**

JF: I think it depends on what you're looking for in the particular situation. You may be looking for a strategic partner if you think your success depends on having a partner who brings complementary expertise. You may be looking for a financial partner if you think you have the expertise to make the business work but want to partner with someone to share the financial risk. It really depends on what your needs and priorities are at that moment, for that deal.

**TP: How important is finding a partner with similar values and synergies as your company?**

JF: It's very important to work with someone with the same goals and general business philosophy as you. Joint ventures are on-going relationships, and even though joint ventures typically have independent management that run the day-to-day operations of the business, major decisions are often made at the board and shareholder level so you want a partner who isn't going to consistently disagree with you. Otherwise, you run the risk of constant gridlock. You can't predict what decisions your joint venture partner will make in the future, so it's important to know a couple of things about your potential partner from Day 1. Generally you want to have a good sense for (1) your partner's view of the venture's overall business strategy, and (2) your partner's general approach to conducting business. You want somebody who is similar to you in those two respects. That's not to say that you want a partner who always agrees with you either. But you do want a partner who shares your view on the overall future direction of the business and a partner with whom you can have collaborative discussions, even if you don't always agree.

**TP: What are some of the biggest obstacles that you have faced while completing a merger/acquisition?**

JF: How quickly a deal closes depends on many factors—getting shareholder or regulatory approvals, obtaining financing, agreement or disagreement on valuation after financial and legal due diligence is done and how motivated the buyer and seller are, among other things. Any one of those factors can slow down a deal. One of the roles of a lawyer on a deal is to anticipate those obstacles and plan for them. They aren't necessarily insurmountable, but you want to make sure you advise your client of what lies ahead. A good and experienced deal lawyer will try to think creatively together with his or her client to try to help resolve those issues. Of course, one of the major roles of an

attorney on a deal is to make sure that the client is aware of any risks associated with doing the deal and to try to minimize or shift those risks if the client isn't comfortable taking them. The lawyer on the other side of the deal is trying to do the same thing. If you can't agree on what those risks are, how big they are and who should bear them, you can hit a pretty big speed bump. Clients want lawyers who help manage those risks by using sound judgment and experience to separate the genuinely problematic issues from those that shouldn't stand in the way of the deal.

**TP: You mentioned that a portion of your duties deal with international business matters. What are some of the issues that arise while working with an international party on a deal?**

JF: There are several that come to mind. One of the most important to keep in mind is that the way you're used to doing business and negotiating contracts in the U.S. may not be similar to the way it's done outside the U.S. There are differences in style and differences in what's considered important enough to include in a contract. If you're not sensitive to the differences in business practice, culture and philosophy and you don't conduct your negotiations accordingly, you can really slow down a deal.

Obviously, you need to also make sure you understand local law. In some countries, there are laws impacting the ability of foreign companies to do business or deals in those countries, so you have to make sure the deal you've structured is going to work under local law. For example, there may be restrictions or conditions on foreign ownership and investment that can affect the deal your client would like to do. A deal term might not be enforceable or permitted under local law, even if it's a straightforward and standard practice in the U.S. Further, just like in the U.S., there might be regulatory filings and approvals, like anti-trust or competition approvals, required to close the deal.

All of this means you have to have good local counsel. There are great firms in every market, but when you enter a market for the first time, it can take some time to identify and hire the right firm for the matter and for you. After 20 years of doing international deals, I've compiled a pretty good list of good overseas lawyers and an informal referral network so it's not the challenge that it once was. But whether it's because one of our regular firms has been conflicted out or doesn't have the right expertise or because we've never had a need for outside counsel in a particular country or some other reason, we occasionally find ourselves researching firms in a market.

Lastly, a practical issue that both lawyers and non-lawyers who do cross-border deals face are time zone differences and holiday closures. When I arrive in my office in Los Angeles, it may be the beginning of my day, but it's towards the end of the business day in Europe, and Asia won't be open for business for several more hours. Or it may be a holiday in England, Hong Kong or Canada that day. You have to remember to take all this into account--your counterparts, colleagues or outside lawyers in London might have been waiting all day during their day for input from you, so you need to be immediately responsive. On the other hand, your lawyers in Asia won't be available to you until the end of your day and might not be able to have an answer to your question for another 24

hours after that. Sometimes you have deals involving people in three vastly distant time zones, which makes things even more inconvenient. I've had conference calls with participants in L.A., Europe and Asia, which means that someone on the call was up in the middle of the night. These challenges are not insurmountable and can be managed, as long as you're willing to sometimes have an early start or late night and as long as you remember to plan your strategy, your day, and your negotiations accordingly.

**TP: Do you have any advice for law students or current practitioners who want to pursue a career as an in-house lawyer?**

I'd give the same advice to anybody who wants to pursue a career as an in-house lawyer or law firm lawyer. First, try to work at a place where you'll get to work on matters that you find interesting. Sometimes, practicing law can be a bit of a grind. If what you do keeps you engaged, even your tough days will be good days. Secondly, remember that you can always be a better lawyer, to always strive to improve and grow as a lawyer. Try to get staffed on the best, most challenging matters that you can, that challenge you and that make you think about things differently. Try to stay away from always doing the same cookie-cutter deals. If you don't, you might become very good at that one thing, but only that one thing. If you do, you'll become a better lawyer and increase your value to your client. If what you're doing is easy for you, then push yourself to do something a little more difficult, something outside your comfort zone. Take on new challenges in new areas--in-house legal departments will want attorneys who are willing to do that. If you're not, you're doing your client and yourself a disservice. In-house legal departments tend to be smaller than law firms, which means you probably won't have the benefit of being able to consult with a lot of different colleagues from many different practice areas. Because of this, in-house lawyers often have to be generalists as well as specialists, who can offer advice outside a relatively narrow area of expertise. The in-house lawyer who can bring that value-add is going to be the most valued. Always work towards being prepared to take on those challenges when they come up. If you do, you'll be the first lawyer they call for the interesting new deal, not the last, and that'll make for a successful and interesting career.