Strategic Alliance
Best Practice User Guide

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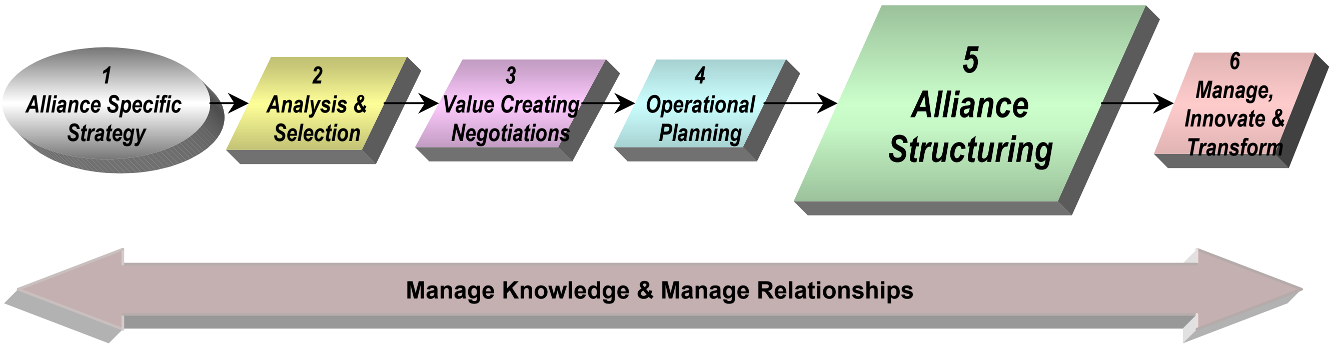
Phase 5 – Alliance Structuring

Alliance Framework



Alliance Structuring Overview

The Alliance Structuring phase focuses on creating legal and organizational frameworks for the strategic alliance relationship, on finalizing operational plans, ensuring that leaders and key managers are in place, and establishing a risk-and-reward formula that motivates both parties to make the relationship succeed. Structuring culminates in the signing of a contract.

A mistake that companies often make in developing strategic alliance relationships is trying to finalize the contract too soon. The best approach is based on the concept of "form follows function." That is, the contract should be a tool for formalizing what has already been discussed and agreed to, rather than a focal point of negotiations. An important rule of thumb: Spend 80% of your time on structuring operations, and 20% on structuring the deal. Detailed terms and conditions, and accounting considerations should not overshadow the more important drivers of strategic intent and operational performance.

The Alliance Structuring phase builds on the broad objectives and goals described in the Memorandum Of Understanding and Principles (created in the Co-Creation phase), and the detailed view of the Operational Plan (created in the Operational Planning phase) to create a framework that reflects the collaborative spirit of those two documents. Therefore, in this phase the alliance team should include individuals with financial, administrative and legal expertise, as well as people with communication skills, and the relationship-building and management experience needed to create a win-win arrangement. The team must also involve senior managers, such as the alliance managers and the champions, to ensure a focus on strategic objectives, goals and collaboration in developing the contract.

Purpose:

- Create the legal and organizational framework that will sustain relationship
- Establish governance structure that is effective and efficient
- Utilize the MOUP in aiding the development of the organizational framework
- Ensure financial systems are in place in order to generate appropriate systems
- Finalize agreements and prepare transformation strategy

~Tip~
Leveraging Learning

Companies alert to the development of core competencies establish a key member of the alliance to act as a “learning liaison”. This person is responsible for disseminating the learning from the alliance throughout the parent company.

Goals, Critical Success Factors and Expected Outcomes

Goals

- Assure governance, integration and control systems are in place
- Fairly apportion risks, responsibilities, resources, and rewards
- Provide organizational, financial and legal structures which operate synergistically

Critical Success Factors

- Create Win – Win agreement
- Ensure that Control doesn't get in the way of Empowerment

Expected Outcomes

- Developed approaches to leadership and organized systems
- Risk and Reward sharing approaches will be developed that are appropriate for the relationship
- A contract developed and agreed to that embodies the above points
- A strong sense of team work between the management and working levels of the organizations
- Well documented implementation plan to execute the alliance launch plan created in the operational planning phase
- Candidate partner selected based on documented criteria

Alliance Structuring

Step 5.1 Governance, Integration, and Control
- Governance
- Empowerment or Dominance?
- Reporting Systems

Step 5.2 Organizational Structure and Support
- Organizational Structure
- Resource Allocation
- Compounded Risk

Step 5.3 Win - Win Business Analysis
- Balancing the “4 R’s”
- Valuation Issue
- Financial Analysis

Step 5.4 Legal Agreements
- Formulating the Agreement
- Legal Counsel
- Exit/Transformation Strategy
- Final Review and Approval

~Tip~
Train for Success

Strategic alliance relationships often require people to acquire new abilities and skills. It is important to consider the use of training for key individuals. For example:

- Alliance managers should be trained in successful leadership and management techniques, as well as alliance skills and relationship management.
- Teams should cross-train with their counterparts in the other organization, particularly in the areas where sales, technology development and service delivery must be highly integrated.
- Key managers should be "seconded"--that is, given short- to medium-term assignments in the partner company to learn how things work at that organization.

Step 5.1 Governance, Integration and Control

Governance

A strategic alliance relationship requires more ongoing management oversight than does a traditional transactional arrangement. At the highest level, the relationship should have a joint governance board or steering committee that includes senior executives from our company and our partner(s). This governance body should guide policy, review the relationship's performance regularly, and generally be responsible for keeping the relationship "healthy", and focused on continuous improvement.

Alliance Executive Council

An effective Alliance Executive Council or steering committee will have five fundamental responsibilities:

- Policy Guidance: Developing and maintaining strategic and operational direction.
- Performance Review: Controlling the alliance by measuring progress against planned results and milestones.
- Innovation and Transformation: Motivating and empowering the alliance to encourage innovation and improvement.
- Problem Solving: Overcoming difficulties in operations.
- Partnership relations: Maintaining a win-win approach and keeping communications open.

Generally, the governance board will have five to seven members, including:

- Champions (in some cases, the champion and the alliance manager may be the same person);
- Alliance manager or managers who oversee the day-to-day operations of the relationship;
- Key Operational team leaders; and,
- Special task force leaders (if any).

In general, the board should meet:

- Immediately after the relationship is finalized;
- At least monthly for the first six months, to ensure that the new relationship gets off to a good start; and,
- As needed after the first six months, but never less than quarterly.

Nearly every alliance relationship incorporates meetings between the participating organizations, but enthusiasm often falls off over time, and meetings occur less frequently or on a lower and lower level, and thus become less effective. The continuation of regular meetings, even when they may not seem absolutely necessary, will help the relationship succeed.

Step 5.1 Governance, Integration, And Control

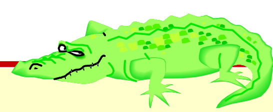
~Tip~
Power Expanders

Choose Alliance Champions and key managers who are "power expanders."

These are leaders who create the right conditions to make others around them feel more powerful and effective. This manager typically leads by giving great guidance to subordinates, by focusing on helping subordinates solve their own problems, and by staying out of the subordinate's details unless it becomes necessary.

Empowerment Or Dominance

An alliance is empowered by its ability to *share* and *expand* power, to create more value *than if working independently*. This is not an issue of dominance, placing one member in the superior position, and relegating the other to the inferior position. In structuring the alliance, it is imperative to create every incentive for both companies to *win more through the alliance than they could win independently*. This does not imply that all alliances must split the rewards 50/50, but that each partner sees their investment and value as essential to the success of the alliance. It is imperative for both members of the alliance to be sensitive to the needs, values, and styles of the other, and, in particular, to be aware of the other partners' Strategic Return on Investment Goals.



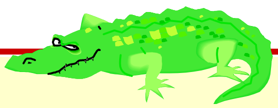
~Trap~

Be ever wary if power and control issues are not dealt with sufficiently. It may forewarn of a lack of interest or motivation, or that the partners, not wanting to offend one another, are treading too cautiously. The alliance itself must be aggressively managed to be successful.

Step 5.1 Governance, Integration and Control

Reporting Systems

A good reporting system must be established as part of the structure of the alliance to ensure the ability to manage by measuring results. A good reporting system also supports the operational plan and its policies by serving as a feedback mechanism. Therefore, the design of the reporting system should be carefully considered to be sure it is performing its integrative function.



~Trap~

Keep reporting systems simple, straightforward, and targeted on key indicators of success. Overly complex reporting will only cause difficulty or will be neglected.

Under all conditions, avoid dual reporting systems. These will inordinately confuse and complicate matters.

Step 5.1 Governance, Integration and Control

Task 5.1
Creating Governance and Control Systems

1. **Alliance Executive Council Membership**

Function	Our Company	Ally Company
Champion	______________	______________
Alliance Manager	______________	______________
Operational Team Members	______________	______________
Financial Members	______________	______________
Ex-officio/Ad-hoc Members	______________	______________
Task Force Member(s)	______________	______________
Others:	______________	______________
	______________	______________
	______________	______________

2. **Operational Integration**
   Operational Fit - are there any areas where there are likely to be clashes or incompatibilities? What are the solutions?

Area/Incompatibility	Proposed Solution
______________	______________
______________	______________
______________	______________
______________	______________

3. **Operational Reporting Systems** e.g., finance, marketing
   List the Operational Reports that will be required and by whom.

Report/Required by	Purpose	Content	Frequency
______________	______________	______________	______________
______________	______________	______________	______________
______________	______________	______________	______________
______________	______________	______________	______________

Use Task 5.1 as a guide in identifying all of the individuals who will be responsible for the various functional areas. It cannot be stressed too often that we need more than names in boxes, we need senior managers' commitment, that the individuals named will be assigned to the alliance as a priority, Rather than as an assignment on a time available basis.

Step 5.2 Organizational Structure and Support

Organizational Structure/Resource Allocations

Remember the “Law of Alliance Architecture”: Form (structure) follows function. Presumably, from the previous phases, the functions of the alliance are now clearly identified.

Before finalizing any financial and legal structure, the organizational structure must be mapped out. There are no firm “rules” for what the organization chart must look like, so long as both partners are committed to making it work.

The basic elements of the organization chart are:

Steering Group
Alliance Executive Council
Operational Teams
Sales Teams
Special Task Force(s)
Support Teams (Dependency)
Other Teams (as required)

~Tip~

Executive Support Required for Success

- Major Investment of Senior Management time is required, especially between the Top Managers
- Management Sets the General Tone for Cooperation and Collaboration
- Fundamental role in Strategy Development

Resource Allocations

Once the Organizational Chart is complete, be sure it truly supports the operational plan, and is designed to achieve the Value Added Proposition and the desired Strategic Return on Investment.

Then, determine what resources will be required from each of the alliance partners. These resource requirements, when analyzed along with the risks, responsibilities, and respective rewards of each of the partners, will enable the partners to derive a fair win - win balance to the alliance. Use Task 5.2 to assist you in developing the organizational chart referenced above. By understanding who is involved and what roles they play, decision making and problem solving issues will be easier to make and resolve.

Task 5.2 Creating Organization Structure And Support

Task 5.2
Resource Requirements

1. Support Needed

Indicate what support will be needed to achieve the alliance's objectives and goals

Financial: ______________________________________
____

Personnel: ______________________________________
____

Materials: ______________________________________
____

Other: ______________________________________
____

2. Training

To have the alliance "hit the ground running," indicate what training individuals within the alliance should have:

____
____

3. Learning

a. What Key Learnings from the alliance should our company be receiving?______________________________
b. How will these Key Learnings be transmitted back into our company?______________________________
c. Who will be responsible for transmitting these Key learnings?______________________________

4. Liaisons

If individuals from the alliance partner need critical information from our company, who in the alliance will help them get it?

____
____

5. Intra-Company Leaking (Control Knowledge Transfer)

How will we protect information that we do not want to flow to our ally?

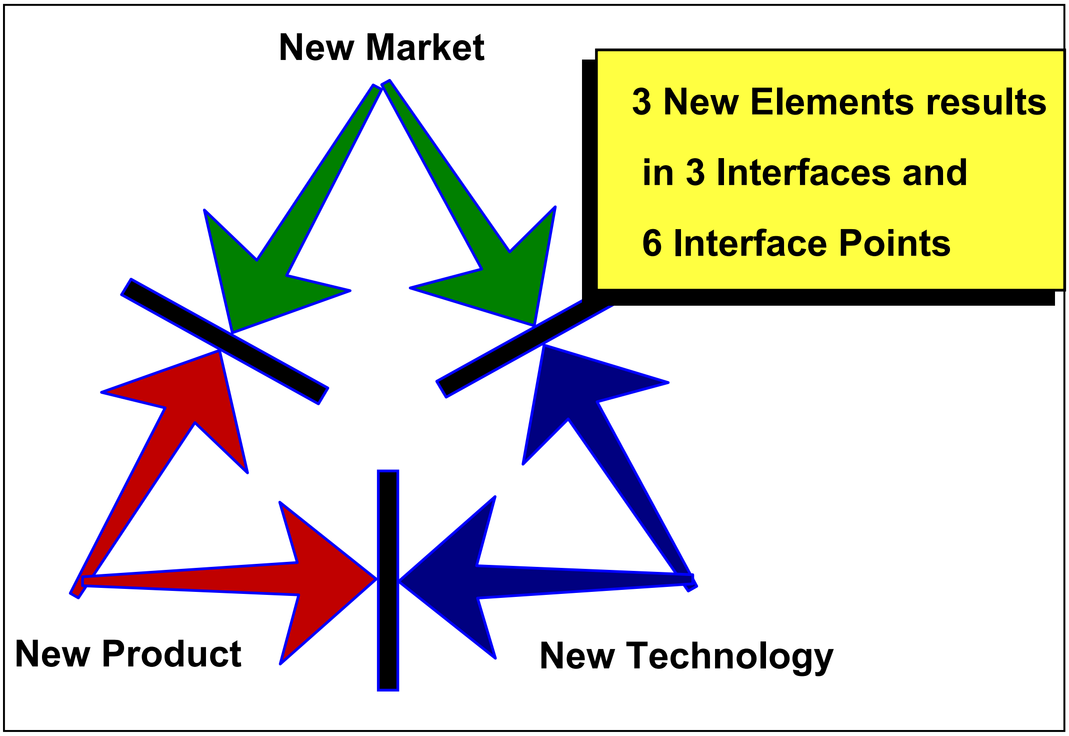
____
____

Step 5.2 Organizational Structure and Support

Compounded Risk

When too many new or unknown factors (i.e. new market with new technology with new product) combine, the risks related to the potential success of the alliance increase exponentially. Figure 5.2 depicts the type of interfaces that can occur and the resulting increase in risks.

Figure 5.2 - Risk versus number of Interfaces



Limit the Number of New Risks: Start with the fewest number of risks, achieve success, then incrementally add new or additional risks.

Interface Points are Critical: For every "new" element interacting with another, a set of interfaces is established. Interfaces are always fraught with potential danger because they mark the points in the architecture of the alliance where inherently different systems, frames of reference, language, and methods have to come together. Communications and coordination are inherently discordant at these interfaces, requiring extra management skill, time, and foresight.

Step 5.2 Organizational Structure and Support

Compounded Risk

Once an interface begins to unravel, resources are diverted from other areas, which then puts the other interfaces at greater risk by diverting focus, which in turn triggers other interfaces to fail, this sending the alliance into an often unending, irretrievable downward slide. The highest risks exist when **new products** with **new technologies** are brought into **new markets**. To reduce risks to more acceptable levels, it is best if both (or at least one) partners know the dynamics of the industry, the intricacies of the market, and their real potential to attain market share.

~Tip~
Formation and Planning Meeting

Avoid confusion and slow starting by conducting a 1-2 day alliance planning meeting which includes all key team members. At this time open communications should be the rule. All of the plans and issues should be addressed and we should ensure that responsibility and timelines have been assigned and agreed to.

Checklist 5.2
Organizational Structure and Support

______ Have the functions and the desired results for the operational team been clarified?

______ Are there sufficient resources allocated to the alliance?

______ What compounded risks might emerge? Has a plan been created to reduce these risks?

______ Are the roles and responsibilities determined?

______ Have reporting relationships been identified?

______ Have measurements and reporting systems been identified, and processes established to obtain them?

______ Have staffing requirements been determined?

Step 5.3 Win - Win Business Analysis

Finalizing The Win - Win

Before formalizing a legal agreement, it is essential to ensure that this alliance is truly a win - win agreement. The “4 R’s” that are essential in this analysis are:

1) Risks;
2) Resources;
3) Responsibilities; and,
4) Rewards.

~Tip~
Why Risk is Vital to Success

“ If long-term motivation by top management is desired, then be sure both long-term risk thresholds are sufficient to keep the partners engaged.”

-- Paul Lawrence
Harvard Business School

Balancing The “4 R’s”:

Avoid arbitrary determinations of win - win. Both sides should have come to the win - win arrangement in an open, reasonable, and logical manner. Figure 5.3 demonstrates how the “4 R’s” of the alliance are fairly apportioned between both partners. The financial rewards should be distributed based upon the relative proportion of risks assumed, resources invested, and responsibilities for results of each company. There is no hard and fast rule for this determination, so long as it is logical, reasonable, and the arrangements keep both parties highly motivated to succeed. Remember, rewards do not have to be equal, but they must be equitable.

Like rewards, the abundance of control should go to that partner who assumes the greatest risks, responsibilities, and commits the greatest resources. However, to optimize the alliance spirit, some dominant alliance partners have shared balanced control with a less influential partner. The point being that precision in determining the balance of control may not be necessary.

Step 5.3 Win - Win Business Analysis

Figure 5.3 Balancing Win - Win

~Tip~

Be creative in designing win - win arrangements to motivate success and future growth.

Step 5.3 Finalize Win - Win Business Analysis

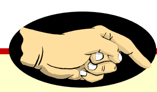
Valuation Issue

Determining the value of certain contributions is often the thorniest of all aspects of alliance negotiations and structuring. If all other aspects of the alliance formation process have gone well up until now, then there should be sufficient trust, creativity, understanding and flexibility so that little difficulty will be encountered at this point.

How to value the contributions each partner is making is normally achieved by breaking down each of the elements being contributed and placing a value on them. An aspect of the valuation process is the risk each organization may be taking by entering into the agreement. Lost revenue opportunity is one risk we may encounter. It occurs when our partner is given sales responsibility but does not invest sufficient resources to ensure success of the venture. How much will this lost revenue and time be worth to our organization?

Valuing monetary contributions are straight forward, we will have to work hard at ensuring a fair valuation for both parties but one that protects our interests for the long term.

Note: ***Not all alliances will require valuation of assets. However, be aware: most joint ventures, and many alliances where technology is being contributed will require valuation of assets.***



~Tip~

Valuation of Technology is one of the most difficult of all valuation questions. If there is a wide disparity in perceived value, try establishing a sliding scale which increases the value/royalty/licensing fee incrementally over time if the market responds positively.

~Trap~
Contacts with Competitors

The alliance partner may bleed through critical information (either intentionally or unintentionally) to a competitor with whom they are doing business. Prior to formalizing any alliance agreement, review the code of conduct guidelines and inform the prospective alliance partner of our company's requirements to prevent the leakage of critical competitive, confidential, and proprietary data.

Step 5.3 Win - Win Business Analysis

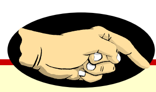
Financial Analysis

The operational planning, organizational structuring, and win - win analysis provide the architecture on which the legal agreement may be based, and formalized. In this way, the business issues have driven the legal document, rather than the reverse. A critical aspect of the structuring phase will be the identification of what financial information will be gathered, reported upon and acted on.

We will need to work with our ally to finalize the performance objectives and operating measures that will be used to evaluate the relationship and determine the sharing of risks and rewards. Many of these objectives an measures will have been tentatively established in the Analysis and Selection phase, and more clearly defined in the Memorandum of Understanding and Principles developed during the Value Creating Negotiations phase (Phase 3).

At times, rolling targets are more appropriate than fixed targets. As one executive says of his company’s arrangement: “Instead of writing key performance measures, we’ve defined a process for setting up, measuring and reporting objectives as we go along.” Because the ability to adapt to change is so important to the success of collaborative relationships, this kind of flexible approach to performance measures can be valuable.

Effective measurements will be critical to the success of the relationship. As discussed earlier in this User Guide, strategic alliance measurement systems should look at more than the costs of the relationship. Instead, they should look at whether the relationship is generating the overall business results that you want to achieve. That means that STROI measurements or some other balanced measures should be at the heart of the financial performance-reporting system.



~Tip~

- Know what “winning” means!
- Know the “Elements of Victory” for your company and its partner.
- Strategic Return on Investment (STROI) defines the win.

Step 5.3 Win - Win Business Analysis

Financial Analysis

~Tip~

The two skills critical to achieving a sustained win - win are:
1) Commitment to Creativity
2) Desire to Attain Synergy

These two skills, if exhibited on the part of the partners will add new opportunities for the alliance; the greater the ingenuity exhibited the greater the revenues that will result. By looking for synergy between our organizations costs will be minimized and profits enhanced.

~Tip~

Critical Advice

The Real Reason for Success

When all is said and done, the real success of the alliance, in the long run, will rely neither on the legal agreements nor on the negotiation skills of the partners, but instead on the strategic fit, the chemistry between the key managers and their ability to adjust the alliance to maintain a win - win result as conditions change in the competitive arena.

Maintaining a win - win perspective is the most important responsibility of the alliance champions and managers. Maintaining this win – win perspective relies not on negotiation skills, but on their commitment to “creativity and regenerativity “-- always seeking new possibilities, new opportunities, and new futures for the alliance.

Step 5.3 Win – Win Business Analysis

Utilize Checklist 5.3 to reassess the alliance's initial business plan against the current conditions. Modify the business plan if new information is now available that will affect our initial expectations and estimations

Checklist 5.3
Win - Win Analysis

1. **Value Added Proposition**:
   _____ Any modifications needed?
   _____ Is it still valid based on final market research?

2. **Strategic Return on Investment**: (see Checklist 2.4)
   Will the alliance meet its objectives, goals and milestones?

Our Company	Ally Company	
_____	_____	**Market Growth**
_____	_____	**Competitive Advantage**
_____	_____	**Innovative Capacity**
_____	_____	**Organizational Capability**
_____	_____	**Financial Return**

3. **Three Dimensional Fit:**
   Does the alliance meet the criteria of a good fit?
   _____ **Strategic Fit**
   _____ **Chemistry Fit**
   _____ **Operational Fit**

4. **Does the alliance meet the 8 characteristics of a successful alliance?** (Review checklist 3.5).
   _______ **Critical Driving Forces**
   _______ **Strategic Synergy**
   _______ **Great Chemistry**
   _______ **Win - Win**
   _______ **Operational Integration**
   _______ **Growth Opportunity**
   _______ **Sharp Focus**
   _______ **Commitment & Support**

Step 5.3 Win – Win Business Analysis

Checklist 5.3 *(continued)*
Win-Win Analysis

5. Sales Forecast:

Is the Sales Forecast

_____ Reasonable?
_____ Believable?
_____ Based on accurate assumptions?
_____ Are there areas that need revision/expansion?
_____ Is this a stretch goal?

6. Financial Analysis:

_____ Reasonable?
_____ Believable?
_____ Based on accurate assumptions?
_____ Are there areas that need revision/expansion?
_____ Is this a stretch goal?

Would you invest your mother's retirement money in this alliance? If not, fix it!

Step 5.4 Legal Agreements

Formulating the Agreement

As the Overview discussed the Alliance Structuring phase focuses on creating legal and organizational frameworks for the alliance relationship. Based on work previously performed in our other phases, finalizing the legal documents should become a relatively easy process. Working with our partner, the business people should take the lead in constructing the document. Legal advisors should be involved to ensure that the document contains the necessary clauses that will prevent legal actions against BCBSF in the future and to mitigate any potential liabilities that could arise from the alliance. Therefore legal advisors are necessary to develop the appropriate language in the contract.

There are times when a conflict will arise between business people and lawyers on how much risk we might wish to expose ourselves to versus what our legal advisors are saying. Under these circumstances you will have to make a business decision and be sure senior management is aware of the difference of opinion.

At this time prepare a draft of the legal agreement for the relationship, and conduct negotiating sessions as necessary. The memorandum of understanding produced in the Co-Creation phase and the joint operational plan created in the Operational Planning phase should form the basis of the legal agreement. Update any material from the MOUP and enclose any data from the Operational Plan which may be relevant.

Prepare a draft of the legal agreement for the relationship, and conduct negotiating sessions as necessary. The memorandum of understanding produced in the Co-Creation phase and the joint operational plan created in the Operational Planning phase should form the basis of the legal agreement. Update any material from the MOUP and enclose any data from the Operational Plan which may be relevant.

In addition to the standard legal and tax issues normally addressed in a contract, consider including agreements about:

- **Customer relationships.** (How will you deal with pre-existing customers, non-compete agreements and conflicts created by product or territory overlaps?)
- **Rights to new products, derivatives and intellectual property.**
- **Contacts with competitors.** (How will the "bleedthrough" of confidential information be controlled?)

Step 5.4 Legal Agreements

Formulating the Agreement (continued)

- **Conduct guidelines.** (What ethical and trust-building standards of conduct are both partners expected to maintain?)

The length of time that the contract should cover varies, but the time frame for a strategic alliance agreement is usually longer (perhaps 5 to 10 years) than it is for traditional contractual arrangements. Such long-term agreements give the relationship time to evolve, and the time needed to achieve more strategic benefits. As one executive says, "I think five years from a business planning perspective is very manageable: The shorter the duration, [the greater] the chances are the economics of the deal may not be as sound. Your partner will not be able to plan out as far in advance and have that commitment on volume and revenue to do a lot of the service piece things that they need to do."

The contract should also have adjustment clauses that require midcourse corrections. Such flexibility is an integral part of building a strong, enduring partnership.

If you are not able to reach an agreement about the shape of the contract, management needs to assess and address where the process has broken down. Have the parties been unsuccessful in building mutual trust? Is the value proposition simply not compelling enough? The use of an objective facilitator may be helpful in such situations.

Finally, continue to build on the positive momentum you have created so far. Bargaining over contract provisions will be easier and less divisive if a win-win attitude and a sense of trust are maintained throughout the final drafting of the contract.

Use Checklist 5.4 as the basis for a review of the structural issues within the agreement.

Step 5.4 Legal Agreements

Exclusivity

Often the issue of exclusivity will be a major negotiations point when structuring the alliance. Exclusivity means each of the partners will only have a relationship with one alliance partner in the target market area (much like fidelity in a marriage)

The alliance manager should be aware of the situations when exclusivity makes sense:

- Both partners are very strong in the market
- Each partner as a highly competitive offering that, when combined with the other partner, is nearly impossible to duplicate
- Large segments of customers are enamored with the market offering
- The partners will be capable of sustaining this competitive advantage for long periods of time

Advantages of Exclusivity

There are several advantages to an exclusivity arrangement:

- Creates a unique relationship/competitive offering
- Establishes deep competitive barriers
- No confusion in marketplace
- Few branding and image difficulties
- Little chance of confidential data bleed-through to competitors

Disadvantages of Exclusivity

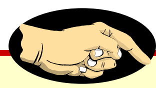
However, exclusivity may not always be the best alternative if it fails to fulfill long term strategic needs, or if the partner's product/service does not have the features desired by customers, or if the partner's distribution is limited. Further, the future may work adversely on the exclusiveness if other new competitors enter the market with more powerful offerings, thus limiting our ability to be competitive. For these reasons, be very careful about including exclusivity provisions in the legal agreements, particularly if the exclusivity arrangement will create an adverse competitive advantage later.

Step 5.4 Legal Agreements

Legal Counsel

Generally speaking, it is advisable to have legal counsel initiate the drafting of the agreement. In this way, it will reflect the terms, conditions and code of conduct that is essential in all dealings with our company, and the alliance partner will have full knowledge of our fundamental values, and ethical underpinnings.

Have legal counsels from both companies meet with both alliance champions, and alliance managers together to understand the issues and terms of the alliance from a non-legal perspective.



~Tip~
Ultimate Agreement

Regardless of the length, cost, or detail of the agreement, it is only as valuable as the commitment and fairness of the parties behind it. If the parties have to refer to the agreement on a daily basis for direction or to solve many problems, then the venture is destined for failure. The negotiations must end with both parties feeling they have obtained a good and fair deal if the partners are to have a successful marriage. No alliance ever succeeded or failed because of the quality of the legal agreements.

Step 5.3 Key Issues

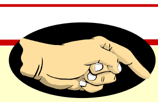
Formulating The Agreement

Checklist 5.4
Structural Issues For The Legal Agreement

Fairly allocate the "4 R's" of structuring:
- Risks
- Resources
- Responsibilities
- Rewards

Ultimately, the central issue in structuring the alliance will be how to distribute these fairly. These four issues will need to be tailored to the particular needs of the alliance -- each has its own unique script. Most arrangements are conceptually short, basic, and easy to understand. There are several questions to be weighed during the early stages:

- Who invests CASH, and how much?
- Who invests TIME, and how much?
- Who receives RIGHTS to:
    * Market or distribute products;
    * Manufacture products;
    * Acquire or license technology; and
    * Purchase future products or technology.
- Who receives TAX benefits?
- Who is RESPONSIBLE for specific accomplishments?
- What happens if more MONEY is needed?
- How are the PROFITS (and Losses) allocated?
- How is CONFIDENTIAL INFORMATION handled?
- What PRODUCTS are specifically included/excluded?
- What are the PATENT provisions?
- What are the guidelines for TERMINATION or revision?
- What GOVERNMENT REGULATIONS should be considered?



~Tip~

No alliance has become successful because of the quality of the legal agreements. However, if the alliance fails, legal documents will be absolutely essential to the reasonable dissolution of the agreement.

Step 5.4 - Legal Agreements

Final Review and Approval

Before signing any legal agreements, ensure that the authorities of both parties which will have executive oversight approves the agreement.

~Tip~

Inform both legal counsels what the time schedule is for finalizing the agreements. Gain an understanding of the importance that they hold firmly to the schedule.

Review the draft contract with the joint executive committee and other senior management, as necessary. A clear understanding of the final agreement is vital to gaining the future support of these constituencies. Use the following steps as a guide towards achieving the final review and obtaining the necessary approvals.

1) Meet with our legal counsel. Review MOUP and Operations Plan. (Include alliance partner's champion, alliance manager, and their legal counsel in the meeting, if advisable.)

2) Schedule appropriate approval meeting times. Inform legal counsel, partner, and core team members of timing for executive approvals.

3) Upon final executive approval of strategic and legal aspects, schedule a "closing."

NOTE: Determine with the legal counsel if the alliance can be "launched" before or after the closing. In some notable circumstances, launch precedes the closing if the alliance partners are sufficiently aligned, have completed a mutually agreed upon Operations Plan, have a high level of commitment and integrity, and have received top level support from both parent companies.

Review figure 5.5 to be sure that all of the documents pertaining to the alliance are complete. Make sure that all parties to the alliance have agreed to all of the expectations laid out in the Operational Plan.

Be sure and schedule all of the governance meetings out through the first six months to be sure everyone has the meetings on their calendars

Step 5.4 Legal Agreements

Exit/Transformation Strategy

Your legal counsel may tell you that the most important clause in the agreement is the “Exit Strategy.” This is correct, but with some explanation. The exit strategy will be essential if the alliance collapses or no longer is strategically or operationally important or viable. The difficult questions the lawyer will ask will prevent our company from being victimized by a highly litigious former partner turned adversary. A well-formulated exit strategy will enable you to retract from the alliance without a detrimental impact. However, the exit strategy should be encompassed within a larger “transformation strategy”.

~Tip~

Consult with the legal department well in advance of finalizing the legal document to be sure the direction of the negotiations will not be torpedoed in the final stages by an adverse legal opinion.

The “transformation strategy” may not be a term familiar to the legal counsel. Transformation refers to how to adapt the alliance to major shifts in the strategic, operational, regulatory or technical environments. Flexibility is a critical factor in the long-term success of alliances. The transformation strategy helps reinforce trust by outlining how the partners will change the structure, direction, rewards formula, and roles and responsibilities when the conditions around the alliance shift. (And you should expect that they will shift -- the only questions are “when?” and “in what direction?”

~Tip~

Closing or Opening?

Many alliances actually commence operations with the finalization of the operational plan (the “opening”), and the later final agreements and legal document catch up with the alliance (the “closing”).

Step 5.5 Final Review and Approval

Figure 5.5 - Alliance Documents

Document Structure

Memorandum of Understanding and Principles (MOUP)
or
Statement of Principles and Understanding (SOPU)

Covenant

Legal	Strategic	Operational	Financial	Structural
Non-Disclosure and Confidentiality	Vision	Business Plan	Required Investments	Governance and Decision Making
Exclusivity	Value Proposition	Operational Integration	Return on Investment	Organizational Structure
Non-Compete	Strategic Alignment	Management and Leadership	Risk/Reward Arrangement	Structural Evolution
Ownership of Intellectual Capital	Strategic Evolution	Time Schedule	Anticipated Cash Flow	Alliance Success Measures
Contract	Competitive Profile	Resource Allocation	Reinvestment of Profits	Optional -- Initial Public Offering Intentions
Legal Structure	Competitive Response	Performance Measures	Tax & Accounting Issues	Transformation & Exit Provisions
Alliance Mediation		Alliance Culture		

Figure 5.5 represents a sample of the multitude of documents that may be required in an alliance. However, not all documents are required for every alliance.

Review this list, determine which sequence and document makes sense for your alliance. Do not load the alliance with an impressively complex array of unnecessary verbosity that may confuse everyone and take inordinate time away from more productive use of resources.