

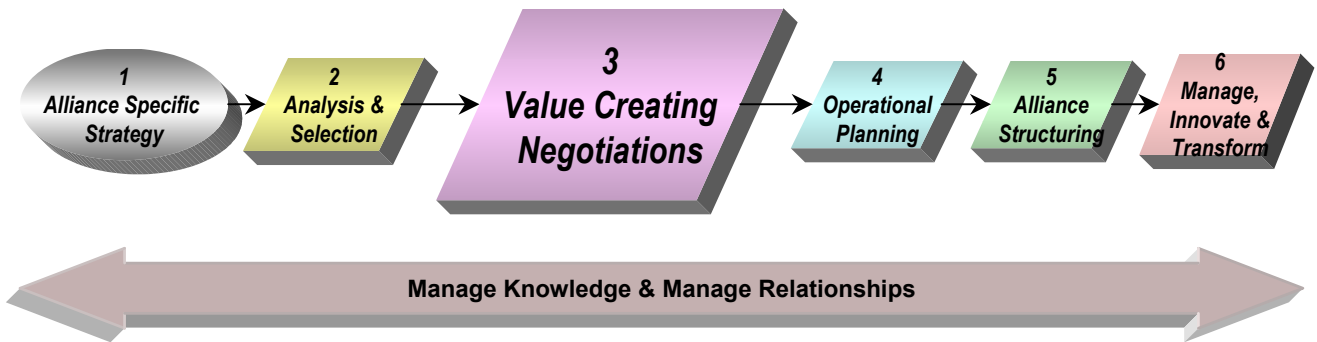
Strategic Alliance Best Practice User Guide

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Alliance Framework



Value Creating Negotiations Overview

Value Creating Negotiations use a concept that is called “Co-Creation”. Co-Creation marks a key departure from the typical head-to-head negotiations of traditional negotiating styles. Instead of behaving as adversaries, potential alliance partners work to understand each other's requirements and find approaches that will benefit both parties. The output of the Co-Creation phase is a memorandum of understanding that describes the broad goals and nature of the relationship.

In the Co-Creation phase, work is done primarily by a small Co-Creation team that is formed at the beginning of the phase. Co-Creation team members should have excellent communication and business skills, as well as skills in the business segments that are to be developed. If possible, the team should also include members who have been involved previously in other alliance or strategic relationships.

Finally, it's important to note that although co-creative negotiation is treated here as a separate phase of the strategic alliance process, it should actually overlap several other phases. From the initial meetings with a potential partner through the signing of a contract and ongoing operations, the two organizations should be working to understand each other's needs and to find ways to combine their competencies to create new opportunities.

The activities that are included within the process steps of the this phase are:

1. Plan the Co-Creation approach.
2. Conduct joint exploration and design of the venture.
3. Create a memorandum of understanding.

Purpose:

- Establish effective negotiating team
- Prepare negotiating strategy in order to achieve a win – win relationship
- Ensure compatible relationship exists between organizations
- Satisfy ourselves that organizations meet our due diligence
- Finalize business document called Memorandum of Understanding and Principles



~Tip~

We cannot solve the problems of today, with the same level of thinking that create the problems in the first place.

--Albert Einstein

Goals, Critical Success Factors and Expected Outcomes

Goals

- Design a Synergistic Future
- Determine if this is the Right Partner
- Build a Relationship Between Key People
- Develop Agreement Between the Companies

Critical Success Factors

- Create a Win – Win Condition
- Know the Chemistry and Culture of each Organization
- Create Value through Co-Creative Negotiations
- Development of a Teambuilding Process

Expected Outcomes

- Select Champion and Assemble Negotiations Team
- Develop Negotiating Strategy Based on the Co-Creation Approach
- Create a Memorandum of Understanding and Principles (MOUP)

Value Creating Negotiations Process Steps

Step 3.1 Champion and Negotiation Team, Teambuilding

- Alliance Management Principles
- Assembling the Negotiation Team
- Why a Negotiating Team?
- Executive Support
- Legal Support

Step 3.2 Co-Creative Negotiations/Chemistry

- Watch for Shifts in Strategic Environment
- Be Sensitive to Changes
- Cooperation's "Golden Rule"
- Poor Partners

Step 3.3 Creating the Win - Win

- Critical Point for Negotiations
- Determination of Right Partner
- Building the Relationship
- Developing an Agreement

Step 3.4 Documentation and Comprehensive Due Diligence

- Purpose
- Mutual Assurances and Confidentiality

Step 3.5 Memorandum of Understanding and Principles

- Developing the Memorandum
- Key MOUP Issues
- Executive Committee Approval

What the Experts Say...

... Don't let lawyers act as key negotiators. Ultimately the venture's success lies not in the Legal agreements, but upon the fundamental Strategy and the success of day-to-day Operations.

...The real value in an alliance is to gain access To new opportunities – new markets, new Technology, new knowledge, new field of view and levels of thinking.



Step 3.1 Champion and Negotiation Team, Teambuilding

Alliance Management Principle: Alliances Require Champions

It is an inviolate law that an alliance will require:

- One champion representing each sponsor;
- Who intensely believes in the future of the alliance;
- Has the unequivocal confidence of and access to the top management of both companies;
- Has a vision for the future of the alliance along with the competencies to be respected by those committed to success; plus
- Has clear access to, and the confidence of his own CEO.



~Tip~

Profile of Champion

- Passionate Crusader
- Entrepreneurial
 - Creative
 - Risk Taking
 - Sees Opportunities
- Vision
- Leadership
- Successful Track Record

At Texas Instruments, no alliance is considered unless it has a champion. They realize that without a willing and committed champion, the alliance will probably wither and die quickly, no matter how well conceived.

No matter how well strategized an alliance is, it will not succeed unless it has a dedicated champion at the operational level who will “own” the alliance. If there is no such person, do not try to find one after the alliance is formed; do not try to “appoint/anoint” one involuntarily. Similarly, be sure your prospective partner also has a willing champion. Another important consideration is the chemistry between the Champions and the Alliance partners.

In addition, the Champion must be closely linked to the Business Sector that will ultimately “own” and “support” the alliance.



~Tip~

Train your negotiating team in alliance strategy and management, as well as in handling confidential material, before commencing negotiations.

Step 3.1 Champion and Negotiation Team, Teambuilding

Assembling The Negotiating Team

Next to the alliance champion, the most important person on the team will be the individual designated as the Alliance Manager who will be handling the day-to-day responsibilities and operations of the alliance. Very early in the negotiating process, be sure the alliance manager is designated by both sides. Failure to designate the individuals early on and not including them in the negotiations will invariably result in their not knowing the intent of many team's decisions. As future alliance managers they will, at best, be terribly disadvantaged, and more likely be unformed, uncommitted, and unenthused.

The core of the negotiation team should be the operations team -- they must "own" their creation, be committed to it so strongly that they are willing to see it through birth, adolescence, and maturity; unlike the mergers and acquisition negotiations process which separates the deal-makers from those in the trenches. The operations team is comprised of individuals that represent all of the functions that will be necessary to implement and maintain the alliance relationship. Since the core players on the negotiations team will continue on as the operations team, they are using the negotiations process as the first step in developing their personal linkages that will help to make future functioning effective.



~ TIP ~

Some Advice Regarding Champions

- Surprisingly, most top managers would not have naturally chosen or expected many of the best champions who emerge for alliances.
- In Japan, a champion stays with the alliance for his entire career, the commitment is so intense.
- Always look out for a weak champion on the other side of the alliance. This is not the type of job suited for a fresh young recruit just out of graduate school.

Step 3.1 Champion and Negotiation Team, Teambuilding



~Tip~

Alliance Manager - Competencies

- Experienced business person, with knowledge of our organizational structure
- Individual has to be a recognized contributor by others within our organization
- Has to be able to resolve issues through team work.
- Has access to senior executives within our organization
- Ability to develop respect from alliance partners organization
- Believes in the value of the alliance and is willing to commit to a long relationship as the alliance manager.

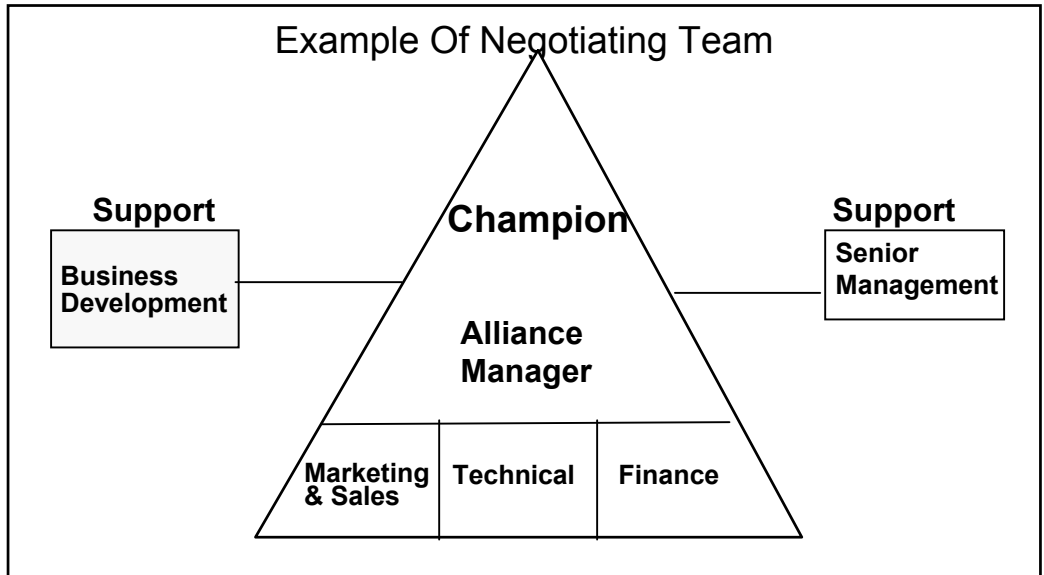
Why A Negotiating Team?

There are several excellent reasons for using a negotiating team over the sole deal maker approach:

- Slows the process down to make sure all the details, contingencies, and opportunities are thought through.
- Enables the middle managers to get involved, ensuring better operational integration.
- Does not commit either company too early to something it may regret later or cannot adhere to in reality.
- Provides an opportunity to gain full understanding and commitment among all those who will have to be involved in structuring and operating the alliance.
- Provides opportunities for experts within the organization to examine the alliance and determine if it makes sense from a multitude of perspectives.
- Builds the foundation for future teamwork.
- The multi-dimensional aspects of the alliance are viewed by our internal experts for evaluation and commitment.

Step 3.1 Champions and Negotiation Team, Teambuilding

Figure 3.1a



Do not forget to involve in the negotiations team, the key operational managers (*figure 3.1a*) who will be responsible for implementing contractual decisions, because their early commitment will be essential later. These operational managers will be a good barometer of whether the right “chemistry” exists below the CEO level.

Executive Support

In addition to a champion, all alliances need top rank support. This requires an important investment of senior management time. Management sets the general tone for cooperation, and middle managers will look to senior management to determine if the alliance is really critical for their career paths. Unless senior management is willing to see the alliance as a fundamental part of their strategy, the alliance will wane.

Legal Support

Do not let lawyers act as the key negotiators; this is the role of the alliance champions. However, lawyers should be involved in advising. Excessive legal documents typically result from ill-conceived back-of-the-envelope style negotiations, where a piece of paper is given to the corporate lawyer with vague instructions about converting it into a legally sound agreement. Because of their expertise, a lawyer’s most valuable contribution and most valuable role is to protect their clients against unreasonable risks.

Step 3.1 Champions and Negotiation Team, Teambuilding

Legal Support *(continued)*

However, when presented with a vague idea of what the alliance is all about, instead of asking strategic and operational questions which are really needed to fill the void, the lawyer may be forced to plug the many glaring gaps with the legal equivalent of nuclear weaponry sufficient to protect their client with an overkill ratio of ten to one. Naturally, the client is pleased with the lawyers warrior instincts, and presents a portfolio of paperwork to the alliance ally, who see its as tantamount to a full blown declaration of war.

Some alliances have never gone beyond the negotiations stage because lawyers began asking the difficult questions about the real risks and how those risks would be minimized. True, overly zealous or very conservative lawyers may occasionally protect their clients right out of an alliance, but more often than not, the probing analysis of a good legal counsel has saved an idealist from a poorly conceived venture.



~TIP~

Link Operational Managers to the Negotiation Team

In orchestrating the highly successful Dupont-Merck joint venture, the alliance champions ensured that core people from the negotiations carried over into the implementation, because only they knew the real intent of the agreement beyond the words of the legal agreement.



~TIP~

Middle Management Support

A cooperative venture will never work unless you have the support of Middle Management.

Any Senior Executive who closes a deal with a ceremonial handshake, then turns everything over to a manager who commences operations "playing it by ear," will soon meet disappointment or failure.



~TIP~

Good Management Begins at the Strategy Stage

Once operational, and presuming a reasonable strategic "fit," alliances succeed because of the quality of their management, not the quality of the legal agreements. Begin the alliance on the right foot to start -- make alliance management an integral part of designing the alliance strategy.

Step 3.1 Champions and Negotiation Team, Teambuilding



Checklist 3.1 Champions and Negotiators

- ___ 1. Champions identified and committed.
- ___ 2. Negotiating team assembled and qualified.
- ___ 3. Negotiating team trained.
- ___ 4. Executive support ensured.

Task 3.1 The Alliance Management Team (Negotiating Committee)

- Alliance Champion: _____
- Services Manager: _____
- Finance and Planning Manager: _____
- Business Unit Executive: _____
- Members of Business Unit (Possible): _____
- Technology Support Team: _____
- Legal (involved when required): _____
- Strategic Alliance Manager: _____
- Business Development Manager: _____

Note: Core Alliance Negotiating Team includes these plus other key members who can make significant contributions.

Step 3.2 Co-Creative Negotiations/Chemistry

Exploiting The “Chemistry Factor”

Good chemistry is both a *cause* and a *result* of a successful alliance. Chemistry is a potent tool deriving its strength from the unification of common business goals and psychological harmony.

Chemistry works on two levels. At the first, most rational level, the alliance is formed because each party lacks certain skills and/or resources. When partners are properly matched, each partner *trusts* the other to provide the missing elements that are: “1 + 1 ≥ 3.”

But beyond this elemental rationale, at a second level, something else happens. When together in a room trying to solve a problem, minds in harmony, for some reason best explained as “psychic,” tend to jointly become elevated, excited, and creative. This is often described as “synergy,” or as “dynamic tension;” and it works. When strategy and structure are in harmony, when trust and integrity are foundations, when enthusiasm and desire are heightened, and when leadership and management enhance human effectiveness, chemistry is in action.

Those who have experienced chemistry know the power of this force which creates a dynamic environment for a “sixth sense” to emerge, enabling the design of unique, creative solutions. When unleashed, chemistry enables partners to generate new answers to problems that would never have been found alone.

Using chemistry in creative problem solving is one of the greatest advantages strategic alliances have over more traditional business structures. Inherently, the alliance provides a staff of experts available to tackle unique, and seemingly insurmountable problems. Without strong inspirational champions and alliance managers who can bring expert resources to the table in a coordinated and harmonious manner, chemistry in problem solving may go untapped.



~Tip~

NOTE: Chemistry is very important in our business alliances. Business today doesn't need muscle to be successful, it requires people who sense what the customer needs, and can work in teams to provide it.

Step 3.2 Co-Creative Negotiations/Chemistry

Earlier the issue of “chemistry” was discussed as being the intangible, but essential ingredient of the alliance. During operational planning, chemistry becomes paramount.

What The Experts Say About “Chemistry”

“I know it sounds cornball, but the most important element for a successful partnership is chemistry.” --
Herbert Granath, President of Joint Venture between
ABC and Hearst Corporation.



Bernard Roth, former Vice President of Tri-Wall, the orchestrator of numerous successful ventures which propelled his company into a massive globalization strategy stated: *“Chemistry is the glue, but it is also the ‘grease’ that allows the differing cultures to work together. Cultural integration, whether between domestic companies, different industries, or social cultures, is virtually impossible without excellent chemistry.”*

William Norris, the architect of Control Data’s numerous ventures, advised that *“no matter how inspired the strategic alliance, it is the people who ultimately will make or break the deal.”*

Honey’s President, Michael Bonsingore states: *“The number one factor in achieving success...is establishing good personal relationships. The most copious legal document is not worth the paper it is printed on without trust and understanding between the partners.”*

Dick Girard, Vice President of Marketing at Elmwood Sensors, a subsidiary of Hawker Siddley has negotiated a number of successful ventures. He advises: *“Don’t even consider signing an agreement with your potential partner unless you can trust their handshake.”* He knows from experience that no legal document is worth anything unless someone’s word can be trusted.

Step 3.2 Co-Creative Negotiations/Chemistry

Watch for Shifts in Strategic Environment

Strategic “fit” is probably the most important to monitor, because when the strategic driving forces for one of the partners changes significantly, the alliance will also be under pressure to adapt. Every joint enterprise exists in a “strategic environment” which presumably made the alliance the best alternative when it was formed. Prior to the alliance’s creation, various other alternatives should have been explored, such as mergers, acquisitions, and internal expansion to be sure that the proper structure was matched to the strategic environment.

As the strategic environment changes or competitive pressures shift, the mission of the alliance may also shift to become more valuable to one of the entities, and less to another.

However, changes to the structure may be futile if it is no longer to the advantage of either one of the partner’s to be part of the alliance. Try as the partners may, they might discover that no longer is the alliance the right structure for the strategic environmental conditions. A multitude of conditions could change causing the partners to re-think the viability of the venture.

Be Alert for Changes in the Operational Environment

Even if strategic conditions remain somewhat stable, the alliance may suffer strains from operational conditions that cannot be corrected simply by mutual discussions and problem solving. Some operational conditions may require a minor re-structuring of the alliance, while other more serious problems may result in a more drastic change, such as termination of the alliance or acquisition of one partner by the other.

Be Sensitive to Changes in Chemistry and Relationships

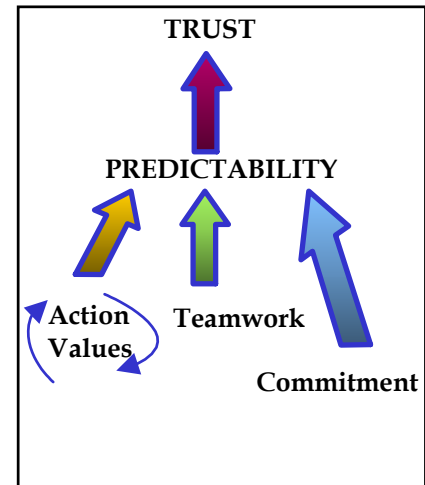
Human relationships, trust, integrity, and values are essential to maintaining the win - win condition in an alliance. When forces intervene that change chemistry, the alliance must make adaptations.

Step 3.2 Co-Creative Negotiations/Chemistry

The importance of chemistry has seldom been given its due position as an essential component in the architecture and processes of alliance formation and management. As we shall see, chemistry underpins the *human* side of alliance enterprise. Chemistry defines and describes the *quality of the relationships between the people* in the alliance. It is one of the three essential “fits;” take it away and the structure of the alliance will collapse. Although intangible, it’s essential as part of the “glue” that holds the two partners together.

Without “chemistry,” the energy, vitality, and trust of the alliance will be missing, and no matter how good the strategy or operations, the venture will fail. Chemistry is the psychological contract -- the energy, the vision, the trust, and the commitment. It is far more important than the written legal contract.

Figure 3.2a Predictability



Like the legs of a three-legged stool, there are three critical elements that will ultimately result in trust and therefore chemistry between the organizations. These three drive predictability which is the foundation upon what trust and chemistry rely on. They are: teamwork, action-values, and commitment. (see figure 3.2a)

1) Teamwork

Can the company in question work well with our company? The answer lies first in the company’s possession of its own internal teamwork. If dissention is high between departments, if edict is the principle means of leadership and control, teamwork is probably lacking. A company that has poor internal communications and coordination is probably unable to maintain the level of external teamwork necessary for an excellent alliance. During the due diligence process, be sure to check this dimension. A company with high personnel turn-over rates at the middle levels makes it difficult to build operational relationships necessary to maintain trust over the long-term.

Step 3.2 Co-Creative Negotiations/Chemistry

2) Action Values

“Action Values” demonstrate if the corporate culture’s deeds are in harmony with words. Can it “Walk the talk?” Organizational schizophrenia is a common malady in companies which espouse one set of values, and act in other, incompatible, and often contradictory ways.

Values make up the essence of a company’s inner core. If values are non-existent, vague, contradictory or not coherent with action, there simply can be no trust, and therefore no chemistry. After all, how can anyone trust something that is inherently ambiguous, contradictory, or incoherent?

Successful people make up successful alliances. Their personal value structure is their inner core, and it is their personal driving force.

3) Commitment

Commitment is the measure of desire, motivation, and integrity to honoring promises and intentions. Without it, there can be no trust. The commitments of the CEO and the Alliance Champion are the most important to recognize here.

Chemistry, like mortar between bricks, fills gaps between imperfect strategic and operational “fits” and helps keep the partners glued together when the alliance is under stress. If, perchance, the alliance strategy fails the acid test of reality, or the operational plans show themselves to be faulty, it is then the chemistry factor that is the pathway to use to rebuild, reorient, restructure, and reform the alliance. One can count on markets changing, technology becoming obsolete, development processes being superseded, political forces intervening, and any number of unexpected occurrences interfering with the alliance. Without excellent chemistry, no amount of strategic planning or crisis management can substitute.



~TIP~

Values and trust become the internal guidance system that lets the alliance achieve its goals and keep the partners in congruent alignment. Without clear, mutually held values, the alliance partners will tend to act independently in their own separate interest, and eventually betray each other’s expectations.

Step 3.2 Co-Creative Negotiations/Chemistry

Cooperation's "Golden Rule"

Businesses that do not prize the value of their reputations generally do not make good partners. The partners must consider their reputations as their most important possession.

When the Golden Rule is ignominiously referred to as "He who has the gold, rules" or "Do unto others before they do unto you," we will all be done harm.

Watch carefully to see if actions and values are in harmony, and if the corporate value structure is of the highest standards. Anything less than the best will create opportunities for disappointment.



~Tip~

The Nature Of Values

Companies with mediocre values do not make good partners.

Mediocre values indicate an underlying lack of commitment to the customer, to the technology, and to the company itself.

Mediocre values usually indicate mediocre management, which will react in uninspiring ways as soon as the first crisis occurs.

IBM's founder, Thomas Watson believed he would succeed in direct proportion to the trust customers had in IBM. Several quotes from IBM's Code of Conduct Guidelines are noteworthy because they are clear representations of a value structure conducive to strategic alliances:

"Don't make misrepresentations to anyone you deal with. If you believe the other person may have misunderstood you, correct any misunderstanding you find exists. Honesty is integral to ethical behavior, and trustworthiness is essential for good, lasting relationships."

"Never use IBM's size to intimidate, threaten or slight another person or organization."

"Everyone you do business with is entitled to fair and even-handed treatment. This is true whether you are buying, selling, or performing in any other capacity for IBM."

Step 3.2 Co-Creative Negotiations/Chemistry



~Tip~ When Examining Values

The alliance must embrace the highest values of:

- performance;
- customer service; and
- business ethics.

Regardless of whether our company or the alliance partner has the contract with the customer, the alliance is a reflection of our company. You must see values that reflect our Corporate Value Structure. If the prospective alliance partner is not familiar with these values, review them with the partner.

Step 3.2 Co-Creative Negotiations/Chemistry



Checklist 3.2a What To Look For In A Partner

Values:

- Do they maintain the highest values worthy of our trust?
- Do their Actions match their Values?
- Are they committed to total quality management and continuous improvement?

Toughness:

- Have they been strengthened by years of competitive victories?
- Are they persistent in sustaining their efforts

Knowledge:

- Are they thoroughly familiar with customer needs?
- Are their technological capabilities considered the best in their class?

Teamwork:

- Does their corporate culture reward and reinforce teamwork and coordination?



Checklist 3.2b Chemistry Questions

Ask these critical questions to determine if the chemistry will be positive.
Do you:

- Trust the other partner?
- Have faith that your partner will do the right things – strategically and operationally?
- Know that the other party will live up to the unwritten terms of the agreement?
- Have an unflinching commitment to create a WIN-WIN arrangement?
- Cherish their reputation as a hard but fair dealer?
Do you believe they:
 - Have integrity?
 - Will do what they say?
 - Will be creative in the face of adversity?
 - Will be predictable under pressure?

Step 3.2 Co-Creative Negotiations/Chemistry

Poor Partners

Several other types of partners are unlikely to have the right chemistry, no matter how good the strategic plan:

Those not into “Partnering” :

Some people just do not have the good luck, expertise, or the desire to enter into alliances of any sort. Their experience and motivation require their sole control of the venture. No matter how well the deal is structured, their personalities simply do not lend themselves to a cooperative approach.

Dependent Companies Which Need You to Survive:

If a company is on the decline and needs you and the alliance for survival, they will make an impossible partner. Companies that latch onto an alliance to stay afloat might be better off being acquired or merged.

However, small growing companies can be an exception to this rule. The equity alliances often serve the dual purpose of both short-term survival and long-term gain. But also remember, this dependency at an early stage of partnering will send off warning lights in the executive chamber; small companies may decide to sell out, leaving our organization working with an unknown alliance partner.

Over-Dominant Ego:

The ego make-up of corporate CEOs can be a very critical factor to success. Every good CEO will have a strong ego. But the over-dominant ego may not be able to generate cross-corporate teamwork, or it may create one-upmanship, or lead to not hearing feedback that enables the alliance to make mid-course corrections.

A “strong ego” leader knows his strengths and weaknesses well, and is willing to deal with them openly. The one with a “big ego” has a 500-pound ego, and a 600-pound insecurity complex.



~Tip~

The executives who have the right chemistry will lead with vision, not coercion, they will be smart but not cold, and especially, they will be creative in the face of diversity.

Step 3.3 Creating The Win - Win

Critical Points For Negotiations:

Win - Win:

Negotiating an alliance is not like buying a house or a car. It is more like arranging a marriage. It is far more important to determine if “1+1≥3,” than to “squeeze the last concessions” out of an opponent. Your objective is to create a “win - win” condition, not a “win - lose.” You are trying jointly to create as much value as possible, and not to extract as much value as possible. Remember, you will have to rely upon your alliance partners when problems occur. Make sure your alliance partner is with you, and not anxious to regain the advantages they perceived were lost in original negotiations. Win - Win results from having enough sales to satisfy both alliance partner’s revenue needs.

Ultimate Goals:

Above all else, the most important aspect of the negotiations process is to determine if your company and the alliance candidate can achieve a mutual win - win arrangement to:

- 1) Attain the Value-Added Proposition (VAP) for the Customer;
- 2) Determine if there is proper strategic synergy, and
- 3) Ensure that each alliance partner can attain its Strategic Return on Investment (STROI).



~Trap~

Deadly Negotiations Sins

Of the Deals That Fail...

Executives lament that during negotiations, time was allocated to:

50% on legal and tax work;

30% on selecting products to produce, market or develop;

20% on strategic issues;

0% on operations planning;

0% on building trust and teamwork;

0% on management and personnel selection;

0% on developing a strong team;

0% on practical decision-making procedures; and

0% on maintaining good communications.

To avoid these problems, allocate time during negotiations for these discussions, and designate key team members to take individual responsibility for each of these factors.

Step 3.3 Creating The Win - Win

Critical Points For Negotiations *(continued)*

There can be no reasonable strategic fit, hence no chance for a successful alliance, if these factors cannot be determined satisfactorily.

Complete Negotiations

Techniques utilized during negotiations include:

- Brainstorm options;
- Treat deal elements as potential trade-offs;
- Build from program to contract;
- Set performance measures;
- Set non-performance results;
- Consider using a third party facilitator, that both parties trust;
- Use one, iterative agreement document;
- Know when to caucus;
- Take extensive and detailed notes;
- Summarize repeatedly, listen for understanding;
- Patience & persistence are vital; and,
- Keep initial agreements short.

Building The Relationship

As in any relationship, you must communicate, listen, give feedback, and probe. Assumptions/claims should build trust, be consistent, and you should be able to deliver on commitments. The people involved should show respect, as well as command respect. Always attack the issues not the person.



~Tip~

Don't undervalue what Your company offers.

Step 3.3 Creating The Win - Win

Thoughts on Co-Creative Synergistic Negotiations:

Co-Creative Negotiations implies there will be a commitment to an alliance between the negotiating parties. The alliance implies that each will be committed to serving the best interests of the other, hence a synergistic relationship, where the whole is far more functional and valuable than the sum of the parts.

For the uninitiated, alliance negotiations will often mistakenly take an adversarial form -- posturing, using bargaining tactics, gaining advantage, and emphasizing control. However, none of these approaches have demonstrated long-term viability in sustaining success. Alliances have generated a new evolutionary form of negotiations based on approaches that seek to support long-term synergy. The methods and processes outlined below will dramatically shorten the time required to negotiate an alliance, and will produce more successful performance.

Co-Creative Synergistic Negotiations require six fundamental skills or characteristics:

1. Design of breakthroughs (generate new paradigm)
2. Vision of a new future
3. Integrity to keep to one's word
4. Synergy building to focus on $1+1 \geq 3$
5. Trust that enables higher performance and is reinforced by integrity
6. Attitude & language that create new possibilities.

Mastery of the “Synergy of Compatible Differences” - called “Dinergy” - is essential to the implementation of any co-creative negotiations.

Definition: Dinergy (from the Greek; dia = opposite and ergos = working). A dinergistic relationship between two parties requires a fundamental shift in the response mechanism from traditional ways of dealing with each other and a shift in the willingness to confront traditional paradigms.

Traditional Responses

- Blaming and defending
- I’m right, you’re wrong.
- You’re different, therefore Bad --
Diversity is scorned
- Emphasis on importance of
Knowledge and having the
right answer
- Constant evaluation of right & wrong
- Desire for predictability and control

Dinergistic Responses

- Turn breakdowns into
breakthroughs
- Ask “what’s possible?”
- Can we use differences to --
generate new paradigms?
Turn diversity into unity
- Emphasis on importance
of creativity and asking the
fundamental questions
- Ask “what’s missing?” and
“what’s possible?”
- Desire for flexibility and
coordination.

Step 3.3 Creating The Win - Win

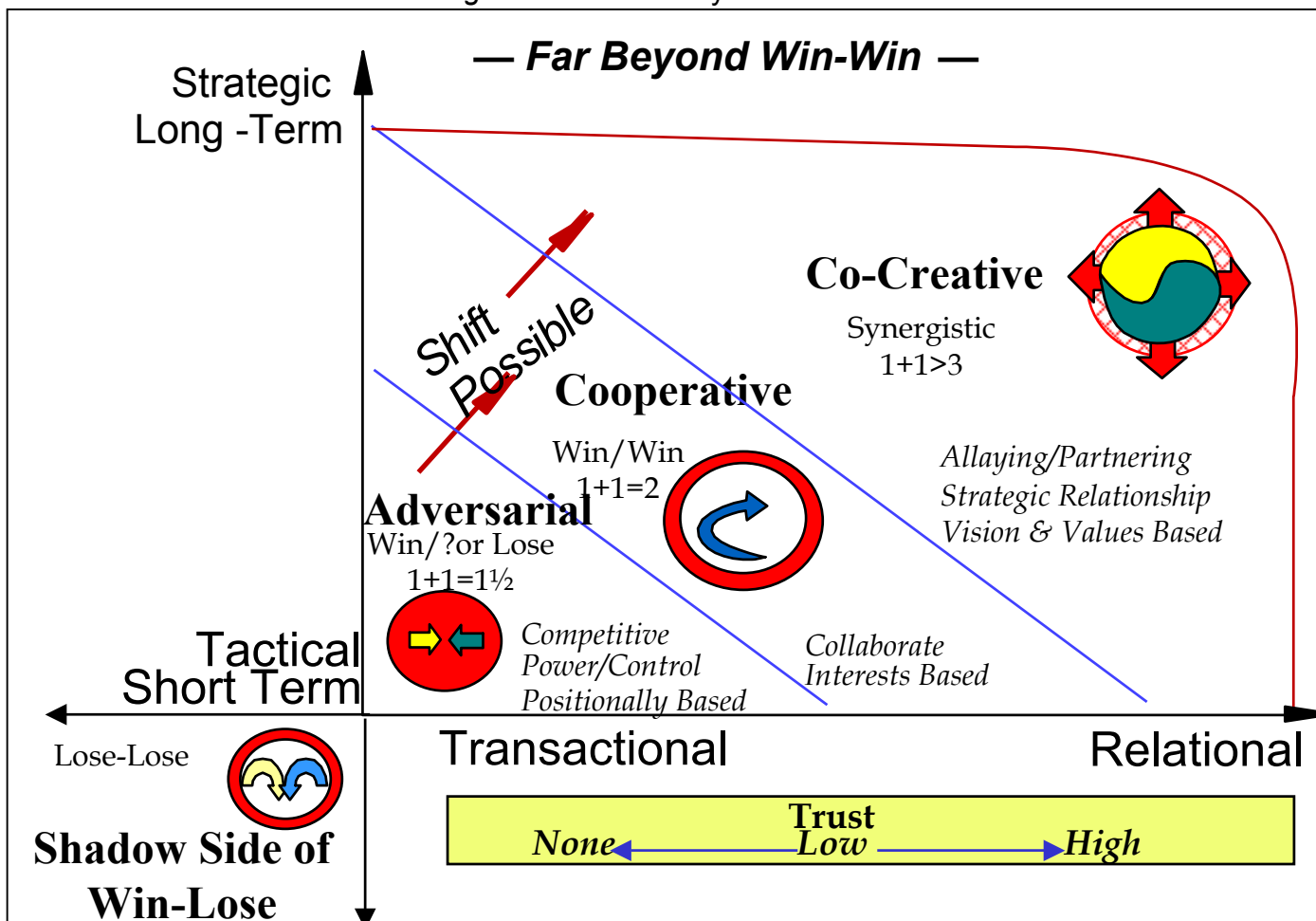
Far Beyond Win- Win

These thoughts on synergistic negotiations are represented graphically in Figure 3.3a. The graph depicts a spectrum of differing relationships, and the negotiating styles required to address them.

In the lower left hand corner of the chart, the approach is shown that we would use for a Tactical Short Term relationship, here we call it "arms length" (adversarial). It is a negotiating style used when the product or service is of short duration and price was more of a consideration than quality or long-term relationships. Buying a car sometimes falls into this category.

From a transactional relationship we move towards one that is more "Cooperative". This is a project-oriented relationship that would be for a defined time period, and that in order for success it requires good cooperation, competitive pricing, good quality and a high level of competency on the part of the parties.

Figure 3.3a - Far Beyond Win - Win

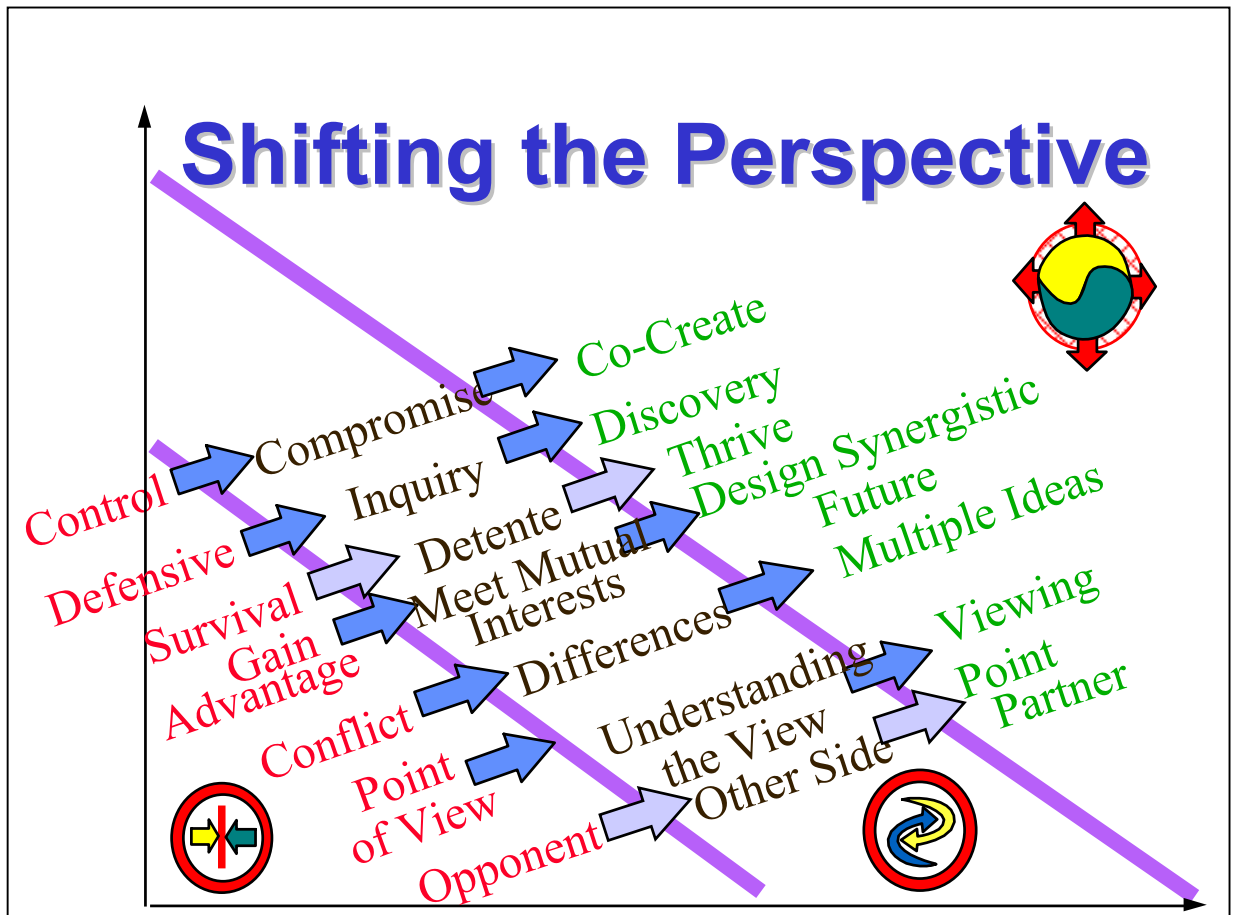


Step 3.3 Creating The Win - Win

Far Beyond Win- Win (continued)

As we move further towards the right on the scale, we enter the relational class of activity. It is in this area of the graph that we see the need for a more strategic relationship. One that is longer lasting and requires the sharing of strategic goals and objectives. It is also in this type of relationship where we may become dependent upon our partners willingness to invest in their competency to ensure longer term success for the alliance. Figure 3.3b provides you with the type of perspectives we will need to apply as we shift our focus to a Co-Creative relationship

Figure 3.3b - Shifting the Perspective



Step 3.3 Creating The Win - Win



~Tip~

Characteristics of Effective Co-Creative Negotiations

- Understanding the right situation to use, adversarial, cooperative, or synergistic negotiations is essential to success.
- Conflict is seldom a problem because ego battles can always be transformed.
- Designing a synergistic, long-term relationship is always built on a foundation of trust and integrity.
- Flexibility and Creativity are invaluable to building an alliance.
- Win/Win is just a starting point, there is much to be gained by pushing farther than win - win.
- Synergy is achieved by a process of co-creation of a $1+1>3$ paradigm.
- Using adversarial negotiation techniques will only produce sub-optimal results when designing an alliance.
- Playing with an “open” rule book will produce better results than playing with your “cards to close to your chest.”



~Tip~

The Co-creative Negotiations Game

- Always focus on creating more -- an expansionary process -- for both parties.
- Aim for designing the future together.
- Create a culture that enables continuous improvements and breakthroughs.
- Make differences an opportunity to explore new possibilities.



~ Tips~

- Don't change alliance negotiating team members unnecessarily
- Don't use the good-guy/bad-guy routine
- Don't forget your strategy and objectives

Step 3.3 Creating The Win - Win

Tactics

Negotiations as Co-Creation: Cooperation and Alliance Architecture are the methods for shifting the energy of conflict from a resistive, win-lose battle into a Co-Creative experience. Below are some terms that we should understand as part of our vocabulary when discussing negotiating tactics.

Resolving Conflict is rarely about who is right. It is about acknowledgment and appreciation of differences.

Fear will sap your ability to channel your opponents energy into a co-creative win, and breaks the co-creative connection of the heart, forcing ego to conquer ego.

Discovery is the power of opening yourself to the wonderful realm of possibility, it is a flexible, open belief system.

Defense is a rigid, closed belief system.

Strategic Future results from asking and answering critical questions about the future, such as, *“What do you want? What’s your vision? What do they want? What’s their vision? What’s missing? What’s possible? What shifts in thinking are needed?”*

Chemistry and Character are essential for a long-term relationship. Therefore, create an environment where integrity and trust can prevail.

Breakdowns are when the Synergistic Processes fail to make progress. At these times use the Win-Win, cooperation style. Avoid blaming and fault finding. Use every breakdown as an opportunity to create a breakthrough.

Integration is the use of secondment (to assign someone temporarily to the alliance partner’s organization) to understand what the issues and concerns of the partner are

Developing The Agreement

First and foremost, the agreement must be a win - win for both parties. Also, it must be better than any alternative for either party, and must be flexible. Keep agreements flexible enough to adapt to the changing needs of the marketplace, to respond to competitive attacks. (see Task 3.5 for the ten critical points to be included within the agreement)

Step 3.3 Creating The Win - Win



~Tip~ “C-ing Your Way To Success”

When working with your alliance partners, we encourage you to...

Be **C**aring

Command Respect (by giving it)

Be **C**reative

Collaborate

Coordinate

Gain **C**onsensus

Celebrate Success

Be **C**onfident

Be **C**onstructive

Be a **C**atalyst

Compliment and **C**omplement

Have a **C**an-Do Attitude

Communicate

Be **C**lient Oriented

Be **C**ommitted

and **Not...**

Compete with one another

Criticize without self-examination

Condescend

Contradict actions and words

Confuse

Compromise excellence standards

Compligate

Conceal

Be **C**ynical

Controlling

from Keith Gaylord and Robert McCants, IBM-US

Measuring Your Bargaining Power

Use Checklist 3.3 to assess our ability to achieve all of our alliance expectations. It is important to know where we can give in as well as how hard to push for what we want from our prospective partner.

Step 3.3 Creating The Win - Win



Checklist 3.3 Measuring Your Bargaining Power

Several key issues should be analyzed in measuring bargaining power:

- How strongly does our partner want the alliance?
- Do they have a strong champion?
- What resources are contributed by each partner?
- What is the relative urgency for each player?
- What other commitments has each player made which will consume available resources?
- What other alternatives exist for the players?
- How highly do the other players regard our strategic and operational strengths and weaknesses?
- Does the other player think that our involvement will be essential to success?
- Are their expectations for performance realistic?
- Can we actually meet our commitments? Can they?
- How willing are you and our prospective partner to frankly and openly assess each partner's individual strengths and weaknesses?
- How will this affect other corporate relationships?

Step 3.3 Creating The Win - Win



Checklist 3.3b Watching For Critical Signs

During the preliminary negotiations you should watch to see if the pre-conditions for a successful alliance are present? There are several pre-conditions to watch for:

- Does your partner have the ability to achieve things?
- Is the promptness of replies adequate to sustain energy and momentum?
- How available are the potential partner's resources?
- Who takes the ball when things need to get done?
- How are the problems addressed? By seeking solutions or by placing blame?
- How good is the quality of communications?
- What is the "Chemistry" like between the organizations?
- Is there an ability to have a marriage of multi-levels in the organization?
- Does the level of commitment match the requirements of the venture?
- Is there a real willingness to work as a team?

If our partner performs well, on these points, the prospects for a successful venture, while not guaranteed, are certainly higher. However, if negotiations drag on, if deadlines pass, if meetings are continually postponed, it is very probable that nothing will ever happen.

Step 3.3 Creating The Win - Win

Task 3.3 Analyzing The Win - Win

1. From Measuring Our Bargaining Power

How well does the Prospective Partner regard our company?

Did the negotiations occur within a win - win environment, or was it a tug-of-war, with each one gaining at the expense of the other?

As a result of your due diligence were you able to determine how significant this relationship would be to our prospective partner?

What areas did we identify as being crucial to the success of the alliance? _____

2. From Watching for Critical Signs

How did the Prospective Partner perform? _____

How well would they rate you if they were filling out this questionnaire? _____

Were the resources they were promising going to be available or were they tied up on long-term projects? _____

Did you determine whether their operating culture would be compatible with ours? _____

Were critical individuals made available for discussion during the negotiations? _____

Step 3.4 Documentation and Comprehensive Due Diligence

Purpose of Detailed Documentation and Comprehensive Due Diligence

This step focuses on gaining vital information for determining if an alliance is likely to be successful by examining five key areas:

1) Market

- a. Size, characteristics, & growth potential
- b. Target customers and their responses to the alliance offering
- c. Channel characteristics

2) Competition

- a. How good is its offering?
- b. What is its future Strategy?
- c. How will it respond to the Alliance?

3) Prospective Partner

- a. Is it a good “fit”?
- b. What does it want?
- c. Is it what it represents itself to be?
- d. Where is it likely to be in the future?

4) Documentation

- a. Financial conditions
- b. Legal conditions
- c. Organizational situation

5) Business Case

- a. Were the original assumptions correct?
- b. What data should we be using?
- c. What do the financial models say?



~Tip~ Memories Fade

Protect ourselves and our partner by writing down our agreements, even informal ones. It will be valuable to refer back to them at a later date to understand why certain decisions were made, especially after key individuals rotate out of the alliance into new jobs. Summarize repeatedly, and listen for understanding.



~Tip~

How much do you really believe in this alliance? Would you invest your own mother's money in it? If not, fix it!

Step 3.4 Documentation and Comprehensive Due Diligence

Mutual Assurances And Confidentiality

When there is highly technical, sensitive, and proprietary information that must be shared before a decision can be made to seriously consider an alliance, a Non-Compete, Mutual Non-Disclosure, and/or Confidentiality Agreement may be in order. Particularly if disclosure of sensitive data would give our prospective partner an opportunity to use the negotiations as a means of exploiting the information, then abandoning the idea of the alliance, and subsequently becoming a serious competitor.

Some organizations also use a Non-Confidentiality Agreement in the early stages of due diligence. This form of agreement restricts our prospective partner from sharing any confidential information with us without first telling us it is confidential. Using this approach minimizes any legal risk, in the event we decide not to pursue a relationship.

~Trap~



Sales Forecasts are usually the “softest” piece of data, typically filled with assumptions and wishful thinking. If you do not feel comfortable about the sales forecasts at this stage, be sure to conduct a joint market research project before finalizing the alliance.



~Tip~

Loose lips sink ships. Marketers and engineers in particular love to talk about their technical exploits and concepts. Inadvertently, they can give away very critical information, that, should the alliance not be consummated, could be very damaging.

Train your negotiations team in effective handling of confidential information. Allow only one person from each company to be exposed to technology during negotiations. And each should have signed an agreement.

If confidentiality and non-compete agreements are called for, be sure to consult with our company’s legal counsel before making commitments to sign or initiate such documents.

Step 3.4 - Documentation and Comprehensive Due Diligence

Documentation Collection and Analysis

Documentation collection and the creation of new data collection and reporting formats for the benefit of the alliance are crucial to the success of the relationship. The old adage “if you can’t measure it, don’t do it” is an important one to remember.

If there is an agreement to pay royalties, or to pay a license fee based on usage, then there has to be a process and an appropriate reporting structure in place. To often we end up committing to pay something, and then discover our systems are not capable of recording, measuring or reporting the information that we need in order to make or collect payment.

Checklist 3.4a “Ask These Critical Questions/Collect Sustaining Data” and Task 3.4 “Documentation Due Diligence” are two tools to assist us in ensuring we ask, collect and validate not only the appropriate data, but its relevance as well.

Step 3.4 Documentation and Comprehensive Due Diligence



Checklist 3.4a

Ask These Critical Questions/Collect Sustaining Data

1) Market Data

- Size, Characteristics, & Growth Potential are acceptable
- Target customers and whether their response to the Alliance offering is positive
- Are customer surveys favorable?

2) Competition

- How good is the competition's product/service offering?
- Channel Choice?
- Channel Management?
- What is its future strategy?
- How will it respond to the Alliance?

3) Prospective Partner

- Is it a good strategic "fit"?
- Do they have clear goals and strategies?
- Are they what they represent themselves to be?
- Where are they likely to be in the future?

4) Documentation

- Financial Statements to ensure capacity to uphold financial commitments
- Relations with vendors (are bills paid on time) and relations with customers
- Court Filings -- is the company always involved in litigation?
- Industry reputation -- is it "quality"?
- Quality of the top managers -- do they have a good track record? Is there high turnover?
- Critical Strategic Decisions in the Past -- do they have a record of excellent judgment?
- Board of Directors -- does the Board support the decision to form an alliance? Will they support or undermine the CEO?
- Core Organizational Values -- do you like their:
 - Reputation
 - Teamwork
 - Tough-mindedness
 - Adherence to commitment
 - Discipline
 - Loyalty
 - Integrity
 - Loyalty
 - Human Resources
 - Enterprise
- Review of other Alliance agreements already in place (i.e. exclusivity, competitors, etc.)
- Run and Analyze Financial Models

Step 3.4 Documentation and Comprehensive Due Diligence



Checklist 3.4a (continued) Ask These Critical Questions/Collect Sustaining Data

5) Business Case

- Were the original assumptions correct?
- What data should we be using?
- What data are still needed?
- Modifications needed to the business case?

6) Exchange of Documentation

- Market Data
- Technological Data
- Confidential Data

Step 3.4 Documentation and Comprehensive Due Diligence

Task 3.4 Documentation Due Diligence

1. Market Data
Size and Growth Potential _____
Target Customer Response _____
Channel Characteristics _____
2. Competition
Customer's View of the Product/Service Offering _____
Command of the Channel _____
Channel Management Strategy _____
Expected Competitive Response _____
3. Prospective Partner
Strategic Fit _____
Chemistry Fit _____
Clarity of Goals & Strategy _____
Accuracy of Corporate Representations _____
Likely Future _____
4. Documentation
Financial Condition _____
Legal Condition _____
Organizational Situation _____
5. Business Case
Validity of Original Assumptions _____
Data Still Needed _____
Modifications Needed to Business Case _____
6. Ensure Confidentiality
Exclusivity _____
Non-Compete _____
Bleed-Through (Intra-Company Leakage) _____

Step 3.5 Memorandum Of Understanding And Principles (MOUP)

Form (Structure) Follows Function

Once negotiations have proceeded to outline the basic terms & conditions of an alliance, many deal makers are tempted to “structure the deal,” and jump to detailed legal agreements. This should be carefully avoided at this stage. Instead, a brief Memorandum of Understanding and Principles (MOUP) should be generated outlining the fundamentals of the union, including the strategic fit, the presumed operational interfaces, objectives and goals.

This is the midpoint in the alliance formation process. The MOUP now crystallizes key points and sets the foundation for finalization of arrangements. Structural issues should be only broadly outlined at this point, with final commitments to organizational form, financial investments, and legal contracts formalized after the next Phase of Operational Planning.

What Is the MOUP?

View the MOUP as a road map. It helps you set goals and broad principles for action. It is written by business people for business people; it's not a legal document and it is non-controversial. It is a means of communication for use in-house, between partners, and/or between staff.



~Tip~ Before Going To Executive Committee

Be sure this alliance has all the characteristics of success. Compare the alliance to the 8 characteristics of Success in Checklist 3.5 at the end of this step.

What It Does

The MOUP opens communications in-house, between partners, between staffs, and/or between legal counsels. It airs concerns about what should be included and what should be left to negotiations. It also provides background for new staff. The MOUP provides a document for settling minor interim disputes, eliminates duplication of decision-making, and provides clear direction for legal counsel drafting agreements.



~Tip~

“If you can't write it down simply and clearly, you just haven't thought it out well.”

Step 3.5 Memorandum Of Understanding And Principles (MOUP)

How It Works

The MOUP is produced in-house with management sign-off, and the project team confirming the current position. It acts as a position paper that shortcuts posturing of newcomers, and acts as a mandate for attorneys of management, detailing the position on key basic issues. This relieves them of the responsibility of maximizing the clients position.



~Trap~ Length Of Document

Don't allow the MOUP to be more than 5 pages long. No one reads documents longer than that. It will lose its effectiveness if it isn't short and concise. See appendix for an example.

Remember, this is not the Agreement, it is just the outline of a possible agreement. The most important thing is to be sure both companies agree to the direction you are now headed in. You want to be absolutely sure there is senior and middle level leadership support, on both sides, for the current design of this alliance.

Implementation of MOUP

The pre-draft is done by the proposing party and agreed to by their top management prior to any outside contact for negotiations. There should be a discussion of the MOUP paper with potential associates. The discussion should be open to all of the parties involved with the alliance, irrespective of organizational position. Be sure to ensure confidentiality on the part of all parties. Once the MOUP is signed by the various levels of the organization, it can then be used as the basis for the Operational Planning Process. Then, allowing that "form" (structure) follows after determining "functions", the operational plan should be mutually created by the two prospective partners to ensure that the gears of the alliance mesh properly. Writing the operational plan together, the partners test the teamwork at the operational level insuring that the middle managers will be able to maximize their capabilities.

Step 3.5 Memorandum Of Understanding And Principles (MOUP)



Best Practice Tip Joint Presentation

Try having both champions make joint presentations of the MOUP to each company's Executive Committee. In this way, both company's get exactly the same presentation, have a chance to meet the other champion, and both champions have an opportunity to hear specific concerns of the other's approval group.



~Trap~ Statement of Intent

Beware of using the term "Statement of Intent" at this stage in negotiations. It can be ruled as a legally binding agreement in some jurisdictions, such as New York.

Stay with less legalistic terms, such as Statement of Principle or Philosophy, or Memorandum of Understanding.

Step 3.5 Memorandum Of Understanding And Principles (MOUP)

These 8 characteristics were first discussed In the introduction. They should be the foundation of the alliance, and securely coming into place at this stage of the alliance development process.

Well conceived alliances begin with characteristics which motivate the sponsors. Elimination of any one or more of these factors will reduce the likelihood of a successful venture.



Checklist 3.5

Characteristics Of A Well Structured Alliance

- 1. Critical Driving Forces:** Are there compelling forces which push the alliance together? Without these forces, there is no true reason for the alliance. Can we achieve our goals only with an alliance? Are there any negative forces which might split the alliance over time?
- 2. Strategic Synergy:** Are there complementary strengths -- strategic synergy -- in a potential partner. To be successful, the two or more participants must have greater strength when combined than they would have independently. Mathematically stated: " $1+1 \geq 3$ " must be the rule; if not, walk away.
- 3. Great Chemistry:** Are there cooperative efficiencies with the other company? Do they have a cooperative spirit? There must be a high level of trust so that executives can work through difficulties that will arise. Don't "sell" your company's "beauty," it must be desired by the prospective partner, not sold.
- 4. Win-Win:** All members of the Alliance must see that the structure, operations, risks, and rewards are fairly apportioned among the members. Fair apportionment prevents internal dissention that can corrode, and eventually destroy the venture.
- 5. Operational Integration:** Beyond a good strategic fit, there must be careful coordination at the operational level where actual implementation of plans and projects occurs.
- 6. Growth Opportunity:** Is there an excellent opportunity to place our company in a leadership position -- to sell a new product or service, to secure access to technology or raw material? Is one partner uniquely positioned with the "know-how" and reputation to take advantage of that opportunity.

Step 3.5 Memorandum Of Understanding And Principles (MOUP)



Checklist 3.5 (continued)

Characteristics Of A Well Structured Alliance

7. Sharp Focus: There is a strong correlation between success of a venture and clear overall purpose -- specific, concrete objectives, goals, timetables, lines of responsibility, and measurable results.

8. Commitment & Support: Unless top and middle management are highly committed to the success of the venture, there is little chance of success.

Do All Characteristics Apply? If so, proceed to develop Memorandum of Understanding and Principles. If not, can anything be done to remedy the weaknesses? If not, is it wise to proceed?

Step 3.5 Memorandum Of Understanding And Principles (MOUP)

Task 3.5

Memorandum of Understanding and Principles

- A. Jointly develop a MEMORANDUM OF UNDERSTANDING & PRINCIPLES (2-5 pages long) covering at least 10 critical points: (See *Appendix C* for an actual example).
1. **Purpose of the Agreement:** Outline why the alliance is being formed and what is its perceived mission. Describe the “VALUE ADDED PROPOSITION.”
 2. **Spirit of the Venture:** What is the commitment to the future both companies are seeking? What valued and future vision will engender communications and trust?
 3. **Key Objectives & Responsibilities:** Address what products, services, or other specific projects will be included and excluded from the venture. Identify target markets (i.e. regions, user groups, etc.), and any markets excluded that will remain the domain of the partners. If the venture has purchase and supply provisions, state who will purchase or supply specific products, services, or resources from or to the owners. Clarify and specify objectives and target goals to be achieved by the alliance, when to expect achieving these objectives and goals, any major obstacles anticipated, and the point at which the alliance will be terminated (if any). Each participant should designate an Alliance Manager who will be responsible for their company’s day-to-day involvement in the alliance.
 4. **Method for Decision-Making:** Describe who is expected to have the authority to make what types of decisions, in what circumstances, and who reports to whom, etc.

Step 3.5 Memorandum Of Understanding And Principles (MOUP)

Task 3.5 (continued)

Memorandum of Understanding & Principles

5. **Resource Commitments:** What specific financial resources, such as cash, equity, stage payments, loan guarantees, etc. are needed for the achievement of the ultimate goals. Other “soft” resources may be in the form of licenses, knowledge, R&D, a sales force contact, production facilities, inventory, raw materials, engineering drawings, management staff, access to capital, the devotion of specific personnel for a certain percentage of their time, etc.
 6. **Financial Philosophy:** “Soft” resources should be quantified with a financial figure so that a monetary value can be affixed and valued along with the cash commitments to this venture. The manner of handling cost over-runs should be agreed upon. Pricing, costing and transfer pricing procedures should be explained if applicable.
 7. **Assumption of Risks & Division of Rewards:** what are the expected rewards (new product, new market, cash flow, technology, etc.?) How will the profits be divided?
 8. **Project Specific Issues:** Who has the right to products and inventions? Who has the rights to distribute the products, services, technologies, etc.? Who gets licensing rights? If the Confidentiality and Non-Competition Agreements have not yet been drafted in final form at this point, they should be addressed in basic form here. How will agents and distributors be handled?
 9. **Anticipated Structure:** This section should describe the intended structure (written contract, corporation, partnership, or equity investment, etc.)
 10. **Transformation:** What do the partners foresee as the future of the alliance? How will it evolve, or unwind? Any termination provisions should be identified.
- B. Present the MOUP to the appropriate executive committee for approval or revision of strategic alliances.