
10 Early Steps to Alliance Success

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While M&A deals, though fewer in number, still grab the headlines, alliance transactions have become a fact of daily life, as companies realize that they can no longer achieve their goals alone. The 10 steps below will make your alliance efforts more efficient and effective.

- **Do Your Due Diligence Early.** You would never consider, in this day and age, doing an M&A transaction without thorough legal as well as business due diligence. Yet, a strategic alliance deal is often negotiated with little review of anything beyond the business case, until the very last minute. In a recent strategic alliance transaction between two biotechnology companies, the prospective alliance partners realized after months of discussions that a critical piece of intellectual property was already licensed out by one of them to a third party – exclusively! It is always better to discover due diligence issues like this one early in the process, while there may still be time to solve them.
- **Get Buy-In on Both Sides.** Making sure that all of your own company's critical constituencies are on board with the alliance is automatic – you know the deal will not work without it. In addition, though, you want to make sure your alliance partner has done the same, not just assume it'll happen. This is especially important where your alliance objectives are more dependent on a capability your alliance partner is contributing but does not view as essential; and it is most likely to be a concern when you are dealing with a larger company.
- **Establish Success Metrics.** Once the alliance is formed, will you be able to tell, in a measurable (not anecdotal) way, whether the alliance is a success? Often, lack of a systematic, well-developed alliance evaluation process leads a company to a haphazard, scattered approach to its alliances, and to failure to identify and terminate non-performers. Knowing success criteria and metrics up front will save your resources down the road, and writing them into the alliance agreement will ensure consistent expectations – and no surprises – from you and your alliance partner.
- **Think Beyond Closing.** More generally, the individuals responsible for forming the alliance, on both sides, need to give some thought to how the alliance will function in practice after the papers are signed and the press release made. Unlike M&A, where many (not all) post-closing operational matters are decided unilaterally by the buyer, alliances need consensus to function well; as a result, more of the operational planning needs to happen

up front to avoid misunderstanding. It is often useful to ensure that your alliance agreement contains a process, to be used post-closing, for various areas of communication (e.g., technical, marketing, sales, production, budgeting) between the alliance partners, identification of issues, their resolution and escalation, etc. While it is impossible to predict and address up front, in the agreement, all of the issues that may arise in an alliance post-closing, having a clearly laid out, agreed-upon process for handling these matters makes for a more productive relationship.

- **Consider Change of Control.** Successful alliances tend to be based, in large measure, on personal relationships and trust, grown through teamwork over time. If your alliance partner is acquired, the resulting personnel and policy changes could be dramatic, and effect on the alliance highly uncertain. Consider in advance what options your company needs to have available in this situation. Not every change of control will have adverse consequences; but for dealing with those that do, it helps if your alliance agreement spells out what choices - termination? loss of exclusivity? buy-down or buy-out of your (former) partner? shift of Board and/or operational control? something else? - your company may have.
- **Address Termination Issues.** The alliance agreement should, of course, describe when it may be terminated. It should also specify, in detail, what happens to the various assets and relationships (e.g., intellectual property, customer and/or vendor commitments) created in the course of the alliance. Especially where an alliance could be terminated by just one of the parties rather than by mutual agreement, leaving these issues silent is an invitation to a later dispute, sometimes a bitter one.
- **Establish a Deadlock Resolution Mechanism.** Where alliance partners will need to reach agreement in the future on a particular business issue (approval of the next alliance budget is an easy example), there is always the risk that the two companies will not immediately come to see eye-to-eye. A well-structured alliance will have in place a mechanism for addressing these deadlocks, and for doing so quickly. Common solutions often include escalation to senior levels within the alliance partner organizations, with perhaps mediation by a respected neutral party added if consensus is not forthcoming. Note that these business issue deadlocks are different from classic "disputes" (such as a claim that one of the parties has breached the alliance agreement) in that arbitration is not usually a good solution for a deadlock - you would not, after all, want an arbitrator to decide your budget for you, or tell you in other ways how to run the alliance's business.
- **Build In Incentives to Drive Success.** A strategic alliance's success or failure often depends on the efforts of a few key individuals within the alliance partner organizations. If these individuals are not properly incentivized to focus on alliance success (especially if their alliance responsibilities are an addition to their "day job"), alliance performance may be in jeopardy. It is often helpful to develop incentive mechanisms at the outset, to ensure that each of the alliance partners is prepared to make the necessary human resource commitments. Having the right incentive structures in place is particularly important if the alliance expects to rely on the alliance partners' existing sales forces. Again, as with other matters, agreed-upon incentive commitments should be reflected in the alliance agreement.

- **Check Cultural Compatibility.** While “corporate culture” can be a fuzzy concept, it is often very important in alliance transactions. A few years ago, a company I represented had a business unit contemplating a joint venture with another enterprise. When discussions got beyond the basic economic terms (on which there was a fair degree of consensus) to the specifics of how the joint venture would be managed and operated, the head of the business unit, an entrepreneurial fellow who was going to become the CEO of the joint venture, was quite taken aback when the other side informed him of the need for joint venture management to be subject to, as they described it, “three levels of oversight.” The joint venture did not happen – and probably should not have. Cultural issues can be particularly important where the prospective alliance partners are very different in size, or where the alliance is a cross-border one. Will the sole founder of a startup company be comfortable in an alliance where he or she must submit to the oversight and control processes that a much larger, perhaps public alliance partner is likely to require, particularly in the current environment? How easily can - or should - a U.S. company adapt to the prevailing business practices in another, less transparent and free-market-oriented part of the world? Thinking about these issues early on and airing them out with your prospective alliance partner can help you streamline your search for the right partnering opportunities and achieve a more efficient alliance formation process.
- **Get Experienced Alliance Counsel Involved.** As in M&A, your and the other party’s counsel can make a strategic alliance transaction flow smoothly - or not. Strategic alliance and joint venture transactions do, however, involve a number of specialized legal skills and approaches that are different from those honed in M&A or general business practice. It is important to have experienced alliance counsel involved from an early stage to enable effective management of the alliance formation process from the legal perspective. Having a good alliance lawyer in your corner, and even encouraging your alliance partner to do the same, can both save you time, money and effort in the formation stage and create a solid basis for a successful alliance relationship in the years to come.

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