Profiting from Joint Ventures and Alliances

Expert knowledge means success

Contents

Note: This publication has not been updated since it was last published. Some of the hyperlinks may have changed and may need updating. In addition, some of the information in this publication may be out of date.

Introduction

Joint Ventures

A Joint Venture is a business activity carried on by two or more persons or companies under a common control and management, with no one party having absolute control.

Alliances

Alliances take place between two or more companies that see an advantage in working together rather – by sharing expertise, sharing risks and resources. These alliances or "partnerships" are arrangements between two or more groups who have agreed to work cooperatively towards common or compatible goals and objectives. The parties can share work, support, power and or information and also capitalize on opportunities that might not be available if each individual group had to engage on the project alone. There are five stages in an alliance arrangement:

1. Initiation
2. Planning
3. Implementation
4. Monitoring
5. Evaluation

Strategic Alliances

Advantages

Many companies who compete successfully in world markets use strategic alliances to gain a competitive edge. Such alliances:

- Allow smaller companies to grow more rapidly than they could on their own
- Help larger businesses acquire the means to improve and expand product lines
- Permit businesses to focus on what they do best, confident that their partners are expertly handling other aspects of the business
- Achieve economies of scale
- Reduce business risk while penetrating new markets
- Increase international competitiveness
- Permit continued development of new product ideas that might otherwise be unaffordable.

Types of Alliances

Licensing Agreements

A business can license the manufacture, sale or use of its products, services or technology to other firms. This does not transfer ownership of the product, only usage rights, so the licensor retains control over the product. Areas of negotiation might include patents, royalties, sub-licensing, rights to sell and manufacture, termination clauses, geographical territory, exclusivity and updating of technology.

Cross-Licensing

Each business licenses the rights to manufacture, distribute or use the products, services or technology of the other. This approach, which is common when two different geographical territories are involved, allows product lines to be broadened with each company manufacturing or marketing the product under its own brand name.

Joint Venture

A separate business formed through the co-operation of two or more parent firms, each having equity and representation on the Board of Directors.

Joint Research and Development

An arrangement where two or more companies share a common R&D operation and all costs incurred, to allow access to a wider range of development areas. This is common in the computer industry with its high R&D costs, intense competition and subsequent reduction in overall profit margins. A consortium can include governments and universities as well as private sector firms.

Co-Marketing or Co-Promotional Agreements

Companies co-operate to market each other's products. An agreement could involve cross-licensing, a shared promotion campaign or even a joint venture to market their products.

Joint Production Agreements

Companies co-operate to make components or entire products, thereby achieving economies of scale and sharing complementary resources. Many engineering companies enter into such agreements with firms having manufacturing expertise. In the auto and telecommunications industries, competing companies often form an alliance to make components they all need.

Alliances in Depth

In most cases, an alliance is born out of necessity because:

- The parties are unwilling to accept the entire risk of the business venture.
- There may be greater operational flexibility.
- There may be diminishing resources in the areas of knowledge, expertise and finances.
- The joint venture brings together a new perspective as well as the technical and other expertise of the parties "in co-operation" rather than the sale of those skills on a customer-contractor basis.
- Synergy exists – for example, one party may have the financial resources whereas the other party holds patent rights and neither can proceed without the other.
- The parties want to retain some degree of control and influence over the venture and are prepared to share accountability for outcome.
- The parties want to share in the profits of the venture.

Factors for Consideration

When establishing an alliance or Joint Venture, there are many factors to take into account, such as:

- Format - what format should the arrangement take (informal, formal, voluntary, contractual, partnership, joint venture, company etc)?
- Clarity - are there clearly defined objectives, roles and responsibilities with agreement on expected outcomes?
- Suitability - have you identified appropriate partners and ensured good representation from all stakeholders?
- Contribution - should there be equality of partners both in financial and operational terms?
- Public image - is there credibility of partners?
- Politics - have you identified any hidden agendas?
- Responsibility and delegation - how will the parties share power, entrust control to others and what ought to be the level of delegation of authority?
- Operational mechanics - is there consensus on vision and values or a process to achieve it?
- Measurement and communication - are there mechanisms to measure progress and regular reporting?
- Disputes - is there an effective mechanism for dispute resolution by ADR, mediation or arbitration?
- Termination - is there a mechanism for the termination of the arrangement?

What Form Can a Joint Venture or Alliance Take?

- By contract – a rather loose form of co-operation by agreement between corporate parties in carrying on and developing the venture but without setting up a separate legal entity to run it.
- Partnership - a partnership is largely governed under the Partnership Act 1890. The main disadvantage is that of joint and several liability for the debts of the joint venture partnership.
- Joint Venture Company – a new company set up for the joint venture and in which the parties have a shareholding and management involvement.

What Documents are required for a Joint Venture or Alliance Company?

- Shareholders' agreement
- New Articles of Association
- Collateral agreement between the parties and the joint venture company
- Documentation to deal with the provision of loan finance

What's in the Shareholders' Agreement?

The shareholders' agreement will typically deal with such matters as:

- Issue of shares to the joint venture or alliance parties
- Day to day management
- Appointment of directors and other officers
- Transfer of shares
- Termination agreements
- Arrangements for further finance

Key Success Elements

- Compatibility
- Focus
- Create win-win situations
- Recognition of each partner's contribution
- Cost effectiveness
- Provide increased opportunities
- Share benefits and risks
- Accountability
- Mutual integrity, trust and respect
- Effective communication with partners

- Protection for minority shareholders
- The management of deadlock situations
- Restrictions placed upon the joint venture partners

Further Information

Alliances can provide both benefits and constraints to organisations that use them. People that use them need to understand their role and complexity. In designing the structure of an alliance, clear objectives and goals, sharing power and control, measuring progress and having and effective and open means of communication between the parties are important elements to consider.

This guide is for general interest - it is always essential to take advice on specific issues. We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

Important Notice

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