

Negotiate

1. Prepare an organizational structure chart.
2. Prepare a summary of the governance structure and control mechanisms.
3. Agree on performance objectives and operating measures.
4. Agree on financial, legal and ownership matters.
5. Evaluate all structural elements for balance and a win – win approach.
6. Draft the contract.
7. Obtain final senior management approvals.
8. Sign the contract.

Full legal contracts should not be developed until you can ensure that all partners are compatible with one another. This “getting to know each other better” can be done on the basis of a Memorandum of Understanding (MOU), which outlines your broad goals and agreed upon working relationships between different enterprises or groups. It is possible to proceed into a pilot project (where risks are manageable) with a completed MOU. However, as the alliance proceeds, possibly working into a scaled-up alliance structure, specific requirements of a legal contract will start to emerge, and the contract you sign will more accurately reflect everyone’s best interests. Delaying the contract allows you to build a trusting relationship before you start discussing things like risk and cancellation clauses.

An agreement generally specifies rights and obligations, but the specific contents and format depend entirely on circumstances (i.e. risk, location, industry, participants and strategic objectives). There is no set formula. For example, a “Letter of Interest” or “Memorandum of Understanding” may or may not be legally binding. Some typical components of an MOU and a legally-binding contract are as follows:

Remember: Legal and financial advice should be sought prior to engaging into and formalizing these types of arrangements.

Memorandum of Understanding, statement of principle:

- Goals and objectives of the alliance initiative (measurable goals and objectives are best).
- Responsibilities of the participating organizations (e.g., resources to be committed, delivery schedules, etc.).
- Roles and responsibilities of key individuals or groups.
- Ownership and equity.
- Communication – Number of regular meetings defined and frequency of operational reports.
- Non-competition clauses.
- Management of the alliance (e.g., staffing, authority, organizational structure, policies, etc.).
- Milestones and performance reviews.

Legally binding contract:

- Details of the above subjects from the MOU or other correspondence.
- Profit sharing (including how profits are calculated), bonuses, and incentives.
- Liability and risk sharing.
- Protection of assets such as intellectual property.
- Cash flow arrangements (e.g., banking, contract payment terms).
- Conflict resolution mechanisms (e.g., ADR, arbitration, mediation, etc.).
- Exit terms (e.g., cancellation or dissolution clauses, buy-out clauses, etc.).

A. Additional Negotiation Considerations:

- Which Products / Services will the Alliance Offer?
- What will be the Pricing to the Customer?
- What will be the Cost share?
- What will be the Revenue share?
- What will be the profit share?
- What will be the acceptable Quality Offered?
- What level of reliability will be offered?
- What will be the service level offered?
- What additional technical expertise offered and from which company?
- How will technical support be offered, managed, delivered and measured?
- How will customer service be offered, managed, delivered and measured?
- Which locations will provide which services and under whose management?
- What investment will be made to enhance and maintain individual business and alliance reputation/brand/image?
- What will be the credit policies?
- What will be the marketing/advertising plan and what will be the cost share?
- How will new product development be funded?
- How will investment decisions for capital and resources be decided, evaluated and funded?
- How will banking and financial matters be managed?
- How will alliance staff hiring decisions be made and how will they be funded?
- Etc...