

Negotiating Alliance

LexisNexis Martindale-Hubbell posed the following question to provide a variety of views on this important topic:

What are the most effective ways to negotiate strategic alliance agreements in complex commercial transactions?

The most successful types of strategic alliances are the ones that benefit both sides equally. However, achieving that type of balance requires a great deal of planning, and in-house counsel must consider many factors during negotiations. Even the most well-structured agreements may not work out, so planning for changes or even the dissolution of the agreement should be part of those initial negotiations.



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The first step is asking the right questions. Some of the fundamental questions to ask are:

- What are we seeking to achieve? Are our goals consistent with those of our partner?
- What are each party's roles and obligations?
- How will the alliance be governed?
- What factors might change over time?
- What if the relationship doesn't work out or we decide to pursue a different course?

Answering these questions up front will help focus the parties in considering and negotiating the strategic alliance.



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- Always start with the big picture. What are the other party's monetary and nonmonetary interests? How will the money flow through the course of the transaction?
- Think outside of the box in order to identify win-win solutions. Is there flexibility in the overall structure of the transaction? Can you improve the overall structure in a manner that benefits everyone's interest?
- Be willing to compromise. Distinguish between issues that are essential and issues which have no material impact on your benefiting from the agreement.

Strategic Agreements



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There is a saying in Southeast Asia that when the elephants dance, the mice step aside. That can seem particularly true when small companies form strategic alliance agreements with much larger companies. There are two things that small companies should remember.

First, although a large company may look like an elephant, it's really a big school of small fish. You need to find the smaller portion of the company where your product meets that group's goal.

Secondly, you need to find the person in the larger company who can be your internal champion.

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First, you need to understand your client's goals. Is the alliance exclusive? Who owns the assets? Also, prepare your client for the negotiations. Discuss relative contributions, geographic or market reach, decision making within the alliance, division of profits, etc.

Just as important, understand the other side. Why have they chosen to work with your client? What do they contribute (technology, access)? What other alliances have they formed?

Finally, remember that this is an alliance, so find a way to address less pleasant issues—indemnification, termination, dispute resolution—amicably.

Illustrations by Holly Haugen

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