



who can challenge assumptions and take a close look at details and potential problems, and ensure negotiators are realistic and objective in assessing the potential deal.

Although the presence of this type of person on your team may occasionally ruffle the feathers of other members, it may also result in a much better deal or the avoidance of a bad one.

Legal and tax professionals have a very important role to play in putting a partnership together. However, their role is largely behind the scenes. It is best to avoid involving your legal counsel as a negotiating agent. This may encourage the other side to do the same and move the negotiations from a search for mutual understanding and benefit to an adversarial process. In some foreign cultures having legal counsel at the negotiating table may also be interpreted as a sign of mistrust. The role of the negotiations is to establish the business framework for the alliance. Once both parties have agreed in principle on how they want the partnership to proceed, legal counsel should be brought in to draw up a sound document to protect both parties and provide the partnership a solid foundation. Tax advisors can help structure the deal for maximum financial benefit.

• The Negotiation Process

The first few meetings between the parties should be used to identify mutual interest and to build consensus about the basic strategy of the alliance. There should be

no pressure to conclude a deal. Spelling out mutual benefits can also help negotiators uncover unrealistic expectations. The early negotiations should allow the parties to get to know each other, clarify expected benefits and identify shared goals.

Before proceeding to serious negotiation involving the disclosure of proprietary data, you must ensure that your competitive advantage is adequately protected. Any technology to be disclosed should be patented. Confidentiality agreements should also be signed to cover sensitive information to preclude the prospective partner from using the negotiations to exploit the disclosed information in a competitive manner.

Once the mutual benefits and general objectives have been set out, the concepts of the venture can begin to be transferred to a non-binding statement of intent. This document is used to move the negotiation beyond the initial conceptual stages to an operational stage where the alliance starts to have a clear description. This document should be drafted mutually by the key players of both parties. A good letter of intent will greatly facilitate the drafting of a binding legal agreement.

• The Alliance Agreement

Very informal alliances often do not require binding agreements. Rather, the partners maintain individual control over their specific areas of responsibility and share the results jointly. Most arrangements, however, are cemented by some sort of contractual agreement.