

Some partnerships are not created to last beyond a certain objective. Others are a mistake from the word go.

Therefore, it is wise to build exit clauses into the negotiation process and into the terms of the partnership agreement. There are many reasons for this.

- Clearly defined responsibilities, rights and procedures reduce tensions.
- The partners know what is expected of them and know the consequences of breaking up the alliance without careful consideration.
- Exit clauses become especially important if a conflict arises that cannot be resolved.

Unfortunately, too many managers do not familiarize themselves with the terms of the legal agreement until they are in dire need of an effective exit clause. They can only hope then that their lawyers served them well when they defined the terms of exit. Clearly, management should be aware of the various options and ramifications of each part of the legal agreement while it is being negotiated. When the alliance has ended, it may well be the exit clause that determines your strategic position.

Winding down a partnership will include issues such as:

- how to dispose of the assets of the partnership (property, goodwill, client lists etc.);
- how to deal with technology and patents;
- use of techniques such as right of first refusal and shotgun clauses to ensure that paralysis does not ensue when a partnership winds down;
- non-disclosure of trade secrets;
- non-competition;
- repatriation of profits;
- disposition of staff; and
- responsibility for warranties, guarantees and product liability.

Most of the legal detail in an exit clause will be concerned with the disposition of assets, staff, technology and patents when an alliance breaks up. In the case of a joint venture, termination clauses usually either give the right of first refusal to the other partner or they dictate the terms of some kind of shotgun sale. Usually, a share price is specified in the exit clause. After all, it is easier to be objective and arrive at a fair price when you do not know whether you will be the buyer or the seller. However, it is also possible to leave this sort of arbitration to a third party.

Exit clauses can be formulated implicitly if for some reason it is not possible to settle on an explicit one. What this means is that instead of explicitly defining a