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# Using partnership agreements to build trust within joint ventures

Collaboration between firms has never been more important to the innovation process. A common approach to IP issues must be agreed from the start and enshrined in a partnership's founding documents

**By Graham Bell**

Faced with the escalating costs of R&D and investments in new product development, companies increasingly look to externalise activities through partnerships, open innovation and joint ventures in a bid to reduce costs, exploit external capabilities and access global ecosystems.

Managing the intellectual assets created is as important as managing the partnership itself and must align with the business needs of the parties. To ensure that interests are protected, a well-constructed partnership agreement defines the activities and drives good behaviour within the teams. Such shareholder or partnership agreements construct the framework of the activity and establish: the rights and obligations of the parties concerned; the expectations for duration, roles and responsibilities; and conflict resolution and exit strategies.

The partnership agreement should be the framework that supports the venture by providing a common reference for managers to communicate the rights, obligations and expectations, to act as a mechanism for communicating intent to the businesses. This should be supported by pragmatic actions, which encourage desired behaviours and ultimately maximise the value to all parties.

## Entry and exit

Entry is often paved with good intentions and the desire to increase the value derived from collaboration, but there is often little consideration regarding how to exit. This can lead to future conflict, especially where the exit is premature.

At entry, a firm must take the following steps:

- Understand and communicate what it has – it should have an IP policy before signing up to the partnership, in order to understand the organisation's approach to IP ownership and exploitation.
- Consider where value will come from and in what form – the firm must decide who owns the intellectual property that the venture will generate (eg, if the purpose is to fill technology gaps, all parties must understand this goal).
- Educate resources ahead of the partnership – senior management must be engaged, but developers are key as they generate the intellectual property.
- Ensure that licence terms for post-partnership use and appropriate exploitation and marketing plans are included in the IP elements of the partnership agreement – a marketing plan should be developed early on.

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A firm should also plan for exit by identifying all possible exit scenarios and building a common understanding of when each party may decide to exit. Establish early on how the IP is divided and licences established with scope and life, and planning for any contractual arrangements that must be dismantled and how to disentangle the associated intellectual property.

## Common purpose

Partners' goals will always differ but to be successful the relationship between individual objectives and the purpose of the partnership must be recognised. To communicate this clearly in a partnership agreement, the parties should:

- translate individual goals into a common set of objectives, endorsed by the senior stakeholders of all parties;
- know what IP each starts with, even if it is not relevant at that time;
- create and maintain an IP register capturing background, sideground and foreground intellectual property; and
- evaluate needs in the context of what the partnership intends to generate.

## Performance-driven commercial approach

High-performing collaborations will have carefully designed performance and commercial mechanisms to drive behaviours to deliver the desired outcomes.

The partnership should have a hard commercial edge. It is important to agree specific outcome-based metrics, including for intellectual property, being clear about parties' expectations for ownership and exploitation, other possible exploitation routes for the foreground intellectual property, the duration of any contributed intellectual property sharing and any licensing conditions that might apply.

To ensure that the maximum value is captured by the initiative, a full and continuous picture of newly created IP must be available; and as far as possible an IP register must reflect the current status of intellectual property as it is generated.

An up-to-date IP register means that a business can demonstrate progress and value for money; track IP and understand the associated implications and risks; and, importantly, celebrate, promote and reward successful IP generation.

## Graceful endings

In order to ensure a successful result, a partnership should end tidily. A final IP audit should be conducted and signed capturing the scope of any ownership – this should help to avoid future legal issues. Previously agreed exploitation plans should be reviewed and implemented. If the partnership has worked well, parties should try to find new ways of working together.

Discussing and agreeing the partnership agreement with key stakeholders in all parties is as important as the result. This is invaluable in producing a pragmatic and fit-for-purpose agreement, which can then be used to build trust with the wider teams. iam