



Chapter 2

Growing Use of Strategic Alliances in the Energy Industry

By Jay G. Martin
Winstead Sechrest & Minick P.C.
Houston, Texas

Synopsis

§ 2.01. Introduction	37
§ 2.02. Strategic Alliances Defined	37
§ 2.03. Reasons for the Proliferation of Strategic Alliances	42
[1] — General.....	42
[2] — Financial and Funding Considerations	43
[3] — Validation of Technology.....	44
[4] — Access to Technology	44
[5] — Access to Manufacturing and Project Management Expertise.....	44
[6] — Access to Distribution Channels.....	44
[7] — Access to Regulatory Expertise	45
[8] — Elimination of Duplication	45
[9] — Risk Sharing.....	45
[10] — Entry into New Product Markets	46
[11] — Economies of Scale.....	47
[12] — Pooling of Complementary Resources	47
[13] — Prelude to an Acquisition.....	47
§ 2.04. Disadvantages of Strategic Alliances	48
[1] — Surrender of Partial Control	48
[2] — High Administrative Costs.....	48
[3] — Less Flexibility	48
[4] — Long-term Commitment	48
[5] — Number of Participants	48
[6] — Compatibility Requirements.....	48
[7] — Overdependence on Partner.....	49
§ 2.05. Key Business Issues that Should Be Addressed Before Forming a Strategic Alliance	49

§ 2.06. Critical Factors in the Initial Formation Stage of Strategic Alliances	50
§ 2.07. Primary Types of Strategic Alliances Utilized in the Energy Industry	53
[1] — General.....	53
[2] — Research and Development	53
[3] — Marketing and Distribution	53
[4] — Hybrid Strategic Alliances.....	54
§ 2.08. Key Issues in Structuring Strategic Alliances	54
[1] — General.....	54
[2] — The Parties	55
[a] — Legal Relationship of the Parties	55
[3] — The Scope, Purpose and Exclusivity of a Strategic Alliance	56
[4] — Financial Structure.....	57
[5] — Ownership, Control and Management.....	59
[a] — Ownership and Control Issues	58
[b] — Management of the Strategic Alliance Venture	59
[6] — Transfer of Personnel.....	61
[7] — Construction of Facilities.....	61
[8] — Supply of Raw Materials	62
[9] — Marketing of Products	62
[10] — Licensing of Know-How and Confidentiality	62
[11] — Service Agreements	63
[12] — Financial Policy, Accounting, Audits, Authorization Policy.....	63
[13] — Non-Competition	65
[14] — Duration and Termination.....	65
[15] — Transfer of Interests	68
[16] — Defaults and Remedies	69
[17] — Governing Law, Resolution of Disputes	70
[18] — The Approval Stage	70
[19] — Legal Concerns	71
[20] — Guarantees, Warranties, Representations	71
[21] — <i>Force Majeure</i>	72
[22] — Choice of Law and Forum	72
[23] — Dispute Resolution.....	74
[a] — Venue	74
[b] — Choice of Law	74

[24] — Alternative Dispute Resolution.....	75
[a] — Scope of the Arbitration Clause	75
[b] — Applicable Arbitration Rules.....	76
[c] — Institutional or <i>Ad Hoc</i> Arbitration	76
[d] — Selection of Arbitrators	76
[e] — Special Skills and Qualifications.....	77
[f] — Language of the Arbitration.....	77
[g] — Discovery	77
[h] — Judicial Intervention.....	78
[25] — Confidentiality	78
[26] — Intellectual Property Concerns	79
[a] — Protection of Intellectual Property	79
§ 2.09. Conclusion	80
§ 2.10. Attachments	82

§ 2.01. Introduction.

In the past decade, virtually all industries including the energy industry have been under great pressure to develop and implement new business strategies to survive and prosper in a rapidly changing and highly competitive global marketplace in which the pace of technological innovation has greatly accelerated. This has forced companies to focus on continuous improvement of their core businesses and to rely increasingly on other enterprises to provide thorough strategic alliances and joint ventures with a wide array of supporting products and services on a cost effective basis because of global demands on their technology and financial resources.¹ This chapter discusses: (i) the definition of “strategic alliances;” (ii) the primary reasons for the proliferation of strategic alliances; (iii) the disadvantages of strategic alliances; (iv) the key business issues that parties should address before forming strategic alliances; (v) the critical factors in the initial formation stage of strategic alliances; (vi) the key factors impacting the success of strategic alliances; (vii) the different types of strategic alliances used in the energy industry;

¹ See John R. Harbison, Peter Pekar, Jr., “Cross Border Alliances in the Age of Collaboration,” in *Structuring, Negotiating and Implementing Strategic Alliances*, 31, 35 (Practicing Law Institute 1998).