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Shipping method: **Ariel**
128.250.128.82

Standard

Journal:	Oil and Gas Law and Taxation Review
Citations:	8():322-328 1998
Author:	P Warne
Title:	Latest Developments on Alliancing and Relevant Legal
ISSN:	02635070

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Latest Developments on Alliancing and Relevant Legal Issues

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Partnering emerged as the buzz word five years ago in the North Sea oil industry. Go back a year, when we had a relatively strong oil price, and some would say partnering had disappeared, either completely or mostly. Some would say it had developed into something very different. Certainly over the years we have seen a range of new ideas and innovative contracting strategies. During 1996 and 1997 there were important developments and a definite focus on gainsharing mechanisms. One year ago we had performance agreements and today we have a new style of partnering brought about, of necessity, by a low oil price. We are also seeing several specific other new influences. The first is the entry into the North Sea of more and more smaller oil companies, who seem interested in operating the tail end of life of field and then assuming decommissioning responsibilities. These companies are jumping on the bandwagon of alliancing—only too glad to shift operational risks onto the large multinational contractors, who seem keen to assume these and obtain a seat at the oil company "high table". The second is the consequences of the real shift in allocation of risk, which means that the oil companies may be faced for the first time with having to settle arrangements with contractors' banking syndicates. The third new development is in the increased volume of arrangements we are now seeing "in a partnering style" between the oil companies in terms of rig, flight and vessel sharing, and industry initiatives such as CDA and First Point Assessment and also, most recently, the new CRINE standard documents.

In June 1998, with a new low oil price, there is a marked enthusiasm for a new style of alliancing all over again. In the last few months there has been an upsurge in alliancing transactions, not only in the UKCS but also in the FSU and in the Gulf of Mexico. Not only are there partnering arrangements between oil companies and service companies but a noticeable increase of inter-oil company cost-saving initiatives. The success of Britannia is being celebrated, first gas due in August of this year, some two months early with cost savings of over $3 per barrel. Britannia has claimed to find its success in a strong safety culture where nothing was more important and where adversarial relationships were replaced by trust, reliability, openness and teamwork. Empowerment of the team and superior performance, enhanced communication, win-win relationships with all suppliers and a focus on reward and celebration are the continuing themes. Stretch objectives and continuous improvement throughout the project have been achieved through tiers of cascading sub-alliances. It is acknowledged that flexibility in contracting was paramount to success and that subcontracts had to be and were therefore modified mid-project.

So what is partnering? Partnering came to the oil industry a few years ago, highly favoured by a few oil companies and some of the brave, innovative and work hungry contractors, and yet it still remains a mystery and misunderstood by many.

It is quite naturally misunderstood by lawyers, since lawyers were in the early stages, to a very great extent, expressly excluded from the new style arrangements because they were seen as obstructive to the commercial deal. It was the technical and commercial managers who initiated and largely put together the early arrangements which emerged, of necessity, in the depressed economic climate and the falling oil price.

Working here in the granite city—very much the heart of Europe's oil and gas industry over the last five years—I find I have been surrounded by "so-called" partnering and have drafted, reviewed and advised on a large variety of different arrangements. Wherever you turn in Aberdeen, companies are "partnering, alliancing, gainsharing, etc." or they want to be partnering, or they want to restructure an alliance or put together integrated services. However, I would like to make two things very clear at the outset. First, that partnering cannot easily be specifically defined: it is a collective term for a wide range of different arrangements. At one end of the scale, partnering in the oil industry has been something new, different and radical. At the other end of the scale, many companies are claiming that they are partnering where, apart from a few public manifestations, it is hard to see any substantial move away from traditional contracting. Secondly, as indicated above, partnering and alliances are a travelling concept and over a four-year period we've travelled through a series of very different styles of partnering. Not only are the arrangements now heavily geared to gainsharing but we are seeing entirely novel risk sharing arrangements. It is common place now, for instance, for contractors to be managing and operating facilities (subject to licence and JOA restraints) or taking equity interests in producing blocks or even taking some of the reservoir risk.

Partnering originally described the oil company/contractor interface for the favoured new style contracting in the North Sea oil industry. So what is partnering? Where did it come from? Is it new? What makes it different? And, vitally, does it work? Is partnering limited to the oil company/contractor interface? What are integrated services alliances? How are the agreements put together and what are the legal issues? And the crucial question: has partnering now gone? In this article, these issues are considered.

In essence, partnering can bring something new and innovative, something challenging in legal terms and something worthwhile in commercial terms. It is more than just a new and nebulous concept—it can be a very useful tool for tangible benefit but only if it is

properly understood and applied in the right way and for the right set of circumstances.

Partnering has been described in the following way:

> The establishment of a partnering arrangement creates a co-operative, rather than an adversarial relationship between the parties, since the essence of partnering is sharing of expertise and information. It removes the costly, wasteful and normally adversarial practice of competitive bidding and, by establishing a relationship which is longer than the normal project by project arrangement, it introduces numerous other beneficial prospects.

Other definitions of partnering have included:

> Partnering is a close working relationship between two parties that results in significant improvements in performance for both parties that would not happen in a conventional relationship.

> Where customer and supplier develop such a close and long-term relationship that the two work together as partners. It is not philanthropy: the aim is that teamwork is better than combat. If the end user is to be best served, then the parties to a deal must work together—and both must win. It works because both parties have an interest in each other's success.

> Companies working together, aligned on minimising costs, increasing profitability and contributing to each other's long-term future.

In partnering, essentially, the companies form a close relationship which may be long-term or may be project specific. It is a relationship based on trust, honesty and openness and where the companies work together to achieve a common set of objectives on the premise that they will share risk and reward. *In true partnering the cliché "win-win" should actually mean something in real commercial terms and either the parties will both benefit from the joint project or they will both lose.* It is not (or ought not to be) a case of the oil company taking all the benefit at the contractor's expense, nor is it the intention to shift risk onto the contractor and squeeze its profit margins. Through the elimination of inefficiency, aligning of interests and streamlining of operations, targets can be achieved without compromising quality and safety and with the result that the oil company cuts its costs through effectively and efficiently meeting targets and the contractor is paid bonuses for meeting performance criteria.

The misconception in the industry seems to have been that partnering equated to the "friendly, friendly" trust, openness and honesty deal—*i.e.* too good to be true and not the real world. Some, therefore, dismissed the philosophy as inconsistent with the harsh reality of the tough commercial cut and thrust of the North Sea industry. But the whole point had been missed. Partnering came to the industry as a tool—of necessity with a falling oil price—and it was all about survival and enhanced performance right from the start. But the way it was going to be achieved was through alignment of interests and working in teams, not through "combat" and oil companies "checking" everything that a contractor did for it. The responsibility shifted to the contractor, or a team of contractors, to produce a total solution for the client.

So if partnering was always about performance, it is not surprising that this is where the focus is today. The writer would suggest that, whereas five years ago we had "softer" partnering agreements which challenged the parties to achieve enhanced performance—and these worked—now we are seeing "blatant" and tightly drawn performance agreements, but these still work on the assumed partnering principles of alignment of intent, alliance board, team spirit, open book, etc.

Some gainshare mechanisms are detailed and sophisticated and yet some operate on "trust" and a graph to indicate who gets what! I will come back to this later with reference to incentive schemes and CAPEX and OPEX gainshares, etc.

So why did partnering start? In the North Sea oil industry, operating costs have, in real terms, been gradually increasing as, in general, the price of crude oil has fallen. Oil companies have therefore recognised the need to reduce costs. Partnering, as a new contracting strategy, has been just one of the means adopted, as of necessity, in order to eliminate inefficiencies, streamline operations and align interests. It was recognised that if margins were not improved, then $13 oil (now at the time of writing closer to $12 oil) was going to drive everyone out of business. The great commercial successes achieved from partnering have given it an impetus and credibility in the market—so much so that many other companies are cautiously but steadily following the example of the early pioneers.

It is useful to consider the origins of partnering. Partnering is not new to the commercial world in general. It has been used in the manufacturing sector for years and has been especially favoured by the Japanese. In the manufacturing sector partnering was essentially very different from the North Sea oil industry species of partnering. Oil industry partnering has been novel in its application to what is essentially a complex and high-risk service industry, and its influence is being extended, in a sophisticated form, through to suppliers of services, well beyond its origins as applied to suppliers of manufacturing components. It is interesting, also, to see that alliancing generally is spreading into different industries and we are now seeing, for example, British Airways entering into alliances with other airlines and evidence of alliancing in the defence and telecommunications industries.

Partnering principles common to many alliances include the setting up of a seamless alliance managed throughout by an alliance board and project management team. Often the oil company is a member of both the project management team and alliance board and there is full alignment of the team with the goals and objectives of the oil company for the project. There is a clear commitment to delivery of high performance for the project including maximising recovery, uptime and value and minimising costs and delays and accelerating first oil whilst managing and improving agreed safety, quality, environmental and ethical standards. Frequently there is a fit for purpose, total solution and often all alliance members and key personnel have entered into letters of commitment to this philosophy. Open book principles apply and there is a commitment to quality delivery and win/win. There is trust, co-operation and openness between alliance members and stretch/target criteria, to ensure extraordinary performance for the project.

Many ask whether partnering is not a new concept, differing only in minor detail from the traditional methods known to us. Sometimes this may be true, but in its purist form, on the contrary, it is a fundamentally different way of contracting and can be a useful tool to secure real commercial advantage and the winning of opportunities. Partnering, and its new forms in alliancing and gainsharing, has certainly been a buzz concept for the U.K. oil industry but has been viewed seriously by many companies as the way to achieve real benefits. Many operators in the North Sea have adopted partnering or alliance arrangements as part of their key business strategy for reducing costs and increasing efficiency. Many now feel that partnering has become so much a part of the North Sea culture for managing key areas of their business that the traditional methods will never re-emerge.

It is certainly the case that the contracts are very different in style and substance today from five years ago. The standard North Sea "terms and conditions" look essentially similar, but now there is much more in terms of structure, management, operation, incentivisation and compensation.

If partnering or alliance arrangements are to work, in any particular case, the partnering philosophy must permeate the organisation of each party. The whole organisation must, therefore, be committed to securing the success of the partnering. There must be an understanding that great improvements in performance are possible and the shared belief that the partnering or alliance arrangement will affect the parties' bottom lines. Philosophy, of course, does not suffice in itself to make the arrangement succeed.

Nevertheless, the continued use of partnering arrangements and their gaining in momentum is, in itself, an indicator of its success. Partnering in some form is clearly here to stay but all the time we are hearing of further new developments. The 1994 partnering ideals seem to have changed and the focus is now more clearly on performance and gainshare. The emphasis is on gainsharing at the expense, if necessary (it seems), of sweeping away the friendly, non-adversarial approach. The sharing of risk and reward is taking a further step and we are seeing contractors taking equity interests in producing blocks. It seems unlikely, however, at this stage that contractors will seek or be given equity interests for exploration. One thing seems certain, however, partnering is moving forward and becoming more creative and innovative. There seems to be no going back to the old-style contracts.

The attached diagram illustrates some of the different structures currently being used for facilitating partnering. From the outset, the relationship style must be fully understood and the issues of performance management, client involvement, information flow, payment approach and incentives need to have been thought through and articulated clearly.

The duration of the relationship must be assessed and will vary. Some partnering arrangements are long term and others may be project specific and they may vary from exceedingly short arrangements to several year contracts. The terms "partnering" and "alliance" are used fairly interchangeably in the industry. As a broad generalisation, however, the early full-blown partnering arrangement tended to be close and long-term ones and alliances have a tendency to be project specific. In each case, for early models there was likely to be a framework or umbrella agreement setting out the partnering philosophy in terms of minimum conditions of satisfaction and separate project agreements which could be added to as the circumstances required. The arrangements between the parties are usually monitored by an alliance board, and complex incentive schemes are frequently central to the deal.

The terms alliance, joint venture and consortium are all used and, with a very few exceptions are *never* entities—either corporate or partnership. These terms legally operate as unincorporated joint ventures. This is sometimes misunderstood and the issue is critical both in terms of assumption of legal liability and tax.

Minimum conditions of satisfaction in the early days articulated the aspirations, targets, ideals and philosophy of the parties. We are now seeing these re-emerge as a number of operators in the North Sea adopt these as part of their alliance agreements. The aim is to minimise the detailed prescription for the scope of work included in the contract. Essentially, the minimum conditions of satisfaction are those conditions that will satisfy the operator but they leave the method of implementation to the contractor. Minimum conditions of satisfaction are intended to be entered into at the start of the transaction (before the lawyers get drafting!) to give clarity on the critical demands of the operator, and they frequently provide the basis for an incentive scheme which is often the key motivating factor of many partnering arrangements.

Partnering and alliances do not necessarily have incentive schemes, but most do, and indeed, as I have said, these schemes have become central and characteristic of the partnering arrangements. Each of the contracting parties wants to increase its income, save costs and become more efficient. Each party wants to "win" and be ahead of target. The parties share the risk and also the cost savings. The old-style "gold plating" is nowhere to be seen—it's a matter of getting the job done quickly, safely, on target and at low cost.

The distinction between incentives (upside only) and gainshare (upside and downside) should be understood. For example, there may be an OPEX gainshare linked to costs but a delivery incentive linked to production profile.

CAPEX gainshares (either bonus or downside-share) typically will have two components: a performance "bank" comprising CAPEX gainshare reflecting the final cost against target cost, and a delivery incentive scheme reflecting final completion date against target completion date.

Gainshare is "earned" from the "bank" often with a performance factor reflecting compliance with the oil company's health, safety and environment policies. Gainshare may then only be claimed if the health and safety and environmental parameters are fulfilled. Fatalities, accidents, pollution incidents, etc. are all recorded and will affect the gainshare mechanism.

OPEX gainshares will work differently and will normally be paid quarterly with an annual reconciliation. Downsideshare for both CAPEX and OPEX is typically capped. Both upside and downside will be

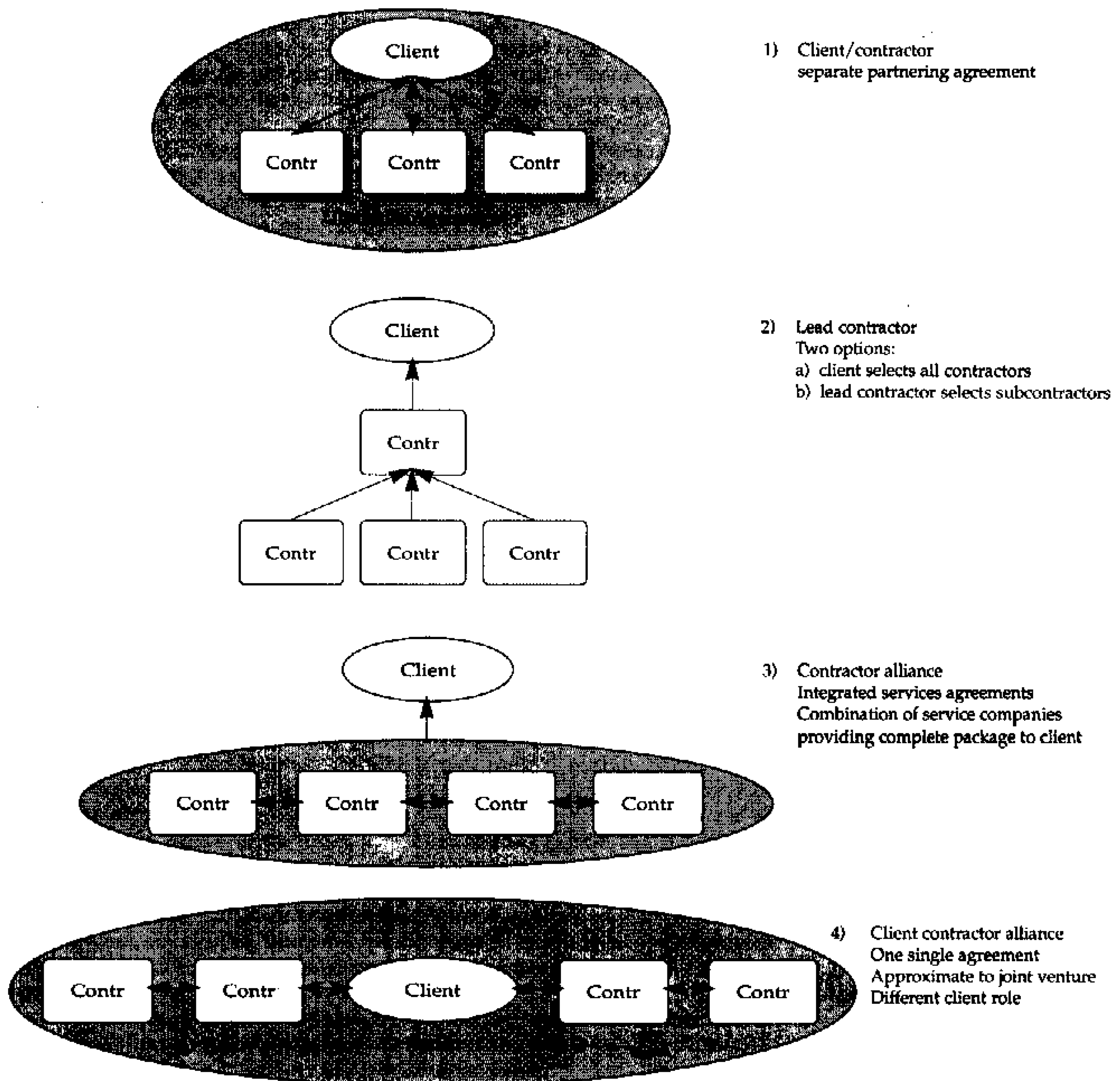

Figure 1. Partnering agreements: different structures

according to percentage participations and these may be variable for different scenarios.

At the time of writing, gainshare arrangements are becoming simpler once again. The Britannica gainshare arrangement, for example, operated from the basis of a graph. If you go back one year it was common to find gainshare arrangements written over 50 pages of formulae.

By popular account, partnering has been for the most part successful for its participants. Before turning to the legal issues, perhaps I should mention that the real challenge and test of partnering will be how long these arrangements remain in place when they are tested and what happens when they appear to fail. The success of partnering as an approach will be judged not only on its delivery of benefits to the parties but also on how it manages complete or partial commercial failure. To date we remain primarily focused on the successes for projects months ahead of target, often with savings of hundreds of millions of dollars.

Partnering Agreements: Legal Issues

The lawyer needs to be creative. Each agreement is different and should facilitate the commercial deal and not restrict it. Typically, the old partnering styles (now re-emerging) started with a framework or umbrella agreement setting out the minimum conditions of satisfaction, incentive schemes and providing for an alliance board for the project or projects.

Also in the older styles, and the new ones, the principles of trust, honesty and openness are stressed

to be fundamental to the foundations of the transaction. Go back one year, and the documents were more focused on performance.

The legal challenge is to draft creatively, concisely and commercially, maximising the upside for commercial gain and with a minimalistic approach to the adversarial safety net.

The incentive schemes are complex and real skill is required to write the gainshare mechanisms which assist the parties to focus on underrun, on target cost and being ahead of target completion date in order to share in the pool of gainshare. If parties believe they are better off by loading costs with hidden overheads and profits and recovering 100 per cent of that rather than, for example, 25 per cent of a pool of "profit", the scheme will fail.

The relationship may change with time and is not static, and therefore the agreement needs to remain flexible. The agreement may be phased and may develop. The original agreements did not necessarily aim to be specific for all eventualities. This was less the case a year ago when the agreements tended to be all-encompassing, but we are now returning to the old-style flexible documentation.

The contract needs to accommodate the relationship structure, not drive it. As indicated above, the lawyer is challenged with creative drafting. It's back to the blank sheet of paper and to writing, in precise terms, what your client wishes to achieve. The draftsman must be able to work without precedents.

A traditionally drafted contract is negotiated to protect interests and will lay out precisely the rights and obligations of the parties, identifying a detailed scope of work, completion, payments, allocation of risk and termination, etc. This type of contract not only gives legal effect to the business relationship between the parties, it also drives the transaction through a pre-determined, detailed and specific route to completion. The contract therefore is designed to drive the relationship. By contrast, for partnering, some issues may be open-ended and imprecise. The contractual framework should facilitate rather than dictate the parties' developing relationship.

In older styles, the documentation did not cover the traditional issues in the typical detail with which North Sea oil lawyers are familiar, and there was the issue of managing the potential lack of clarity in the contract. Minimum conditions of satisfaction were idealistic and the lack of legal precision, together with the commercial incentive schemes, were highly unsatisfactory in strict legal terms. On the one hand, the documentation was short and loose, and on the other hand it was highly complex in technical and commercial terms. The lawyer was faced with a whole new spectrum of commercial concepts to fit together. Go back one year and the documents were very detailed and comprehensive. There were practically no deals done on the legendary three pages of paper! However, in the last few months we are seeing the new-style alliancing re-emerge with shorter and simpler documents.

At the end of the day, it should not be forgotten that should these clauses ever need to be contested, then the risks and liabilities undertaken will need to be unravelled. In the light of the *Orbit Valve* Court of Appeal decision and the inherent lack of clarity in some partnering documentation, lawyers need to be careful that sufficient clarity is preserved.

Alliances have not in the North Sea been deemed to be partnerships. The terms "alliance", "joint venture" and "consortium" are all used and, with very few exceptions are *not* legal entities, either corporate or partnerships. The parties generally operate together as unincorporated joint ventures. This is sometimes misunderstood and the issue is critical both in terms of assumption of legal liability and tax. While most alliance structures do not create a legal partnership, parties and their lawyers should continue to be concerned to avoid creating a partnership in terms of legal obligations and tax.

Lawyers should, however, continue to be concerned to avoid creating a partnership in terms of legal obligations and tax where this is neither appropriate nor the parties' intention. The Partnership Act 1890 defines a partnership as "the relation which subsists between persons carrying on a business in common, with a view to a profit". Whether or not the partnering or alliance members in law have created a partnership is a question of fact, to be determined by reference to the substance of the relationship between the parties set against the statutory definition. If the relationship amounts to a partnership, whatever the arrangement or intention between the parties, each of the members of the alliance will be liable for the debts and liabilities of the partnership. A typical partnering agreement may specifically state that the agreement does not create a partnership, allocating liabilities on a several rather than a joint and several basis. This, however, in itself will not be conclusive evidence of there being no partnership.[1] All partnering arrangements are subject to the statutory rules for determining the existence of a partnership.

U.K. and E.U. Competition law. In its essence, a long-term close relationship between two or more parties is potentially anti-competitive. It may even, in some cases, approach legal merger. Therefore, partnering and alliance arrangements potentially present competition law issues. Lawyers should consider whether arrangements might be caught by the proposed new U.K. Competition Act and/or Articles 85(1) and 86 of the Treaty of Rome. In practice, however, North Sea arrangements have been kept project specific and have not tended to infringe the legislation. Each transaction, nevertheless, should be independently considered on its merits and circumstances.

E.U. procurement. It was suggested in the early days that partnering might be used as a way of artificially avoiding responsibility under the Utilities and Services Directive for procurement purposes. The short answer is that procurement obligations cannot be evaded in this way. With the return of derogation procurement compliance procedures are less onerous, but utilities (which normally include oil companies but exclude contractors) may not avoid their obligation to procure goods and services in an open and transparent way. If they do, they are certainly in breach of their obligations. Utilities cannot use long-

1 *Weiner v. Harris* [1910] 1 K.B. 285.

term partnering arrangements to avoid tendering obligations. The oil companies are constantly under an obligation to demonstrate competitive procurement.

The structures of partnering or alliance arrangements are varied and, some say, do not fall squarely within the parameters of current legal wisdom. Each type of agreement displays varying degrees of integration of the parties' businesses. The lawyer needs to understand the implications and then select the most appropriate structure (see Figure 1) that best meets the parties' requirements. Then, within the structure, the lawyer should ensure that this can effectively work through operation of the framework agreement, alliance board and incentive arrangements. Parties need to understand the implications of whether or not they form an entity and the issue of joint and several liability and its implications.

Alliance board. Typically, the functions and duties of the alliance board are to proactively manage and openly oversee the alliance and ensure alignment of the alliance members and to provide leadership, advice and guidance to the project management team, to administer the risk and reward gainshare, to advise on overall strategy relating to contract programme, target costs, specifications and designs, to agree the targets, measure the performance and support delivery of the project, to foster, monitor and evaluate continuous performance improvement of the alliance, and to seek to resolve any disputes amongst the alliance members.

Project management team. Typically, the functions of the project management team are the day-to-day overall management of the project, to prepare regular status and forward programmed reports on all engineering, technical, claims, cost and contractual aspects of the project, and to ensure that the safety and quality requirements of the oil company and of the regulatory authorities are observed and complied with.

Management of risk and reward—the safety net. The parties will share risk and reward and this must be clearly, even if simply, articulated. The risk is shared in two ways. First, in terms of the financial/performance risk through a gainshare mechanism. Secondly, in terms of liabilities and indemnities, warranties, etc. Partnering agreements, in practice, are faced with the issues of meeting, or failing to meet, incentive targets and will also have to consider the issue of who will be liable for what, and yet the early agreements dealt only briefly with these matters. Newer models are clearer on the interaction of rights and liabilities, as for example between gainshare rights, indemnities in the case of "accident" and warranty exposure. The arrangement assumes success and that bonuses will be paid for meeting targets. Nevertheless, the lawyer should consider setting up at least the safety net for failure to meet these targets and for managing risk. Failure to meet targets may result in a potential loss of income and must not be capable of construction as penalties if the parties' intention to share risk and reward is to be enforceable.

In most models, downsideshare is capped but, for example, a continuing joint and several warranty exposure might not be.

Particular liability issues arise in relation to alliances. For instance, alliance partners should appreciate and must accommodate the differing interests from the commencement of the negotiation process. For example, consider the plight of drilling contractors, construction contractors, sub-sea contractors and suppliers of a specialist tool all working on a project who will need to meld as best they can the equivalent of the combined 9 CRINE documents to protect each participant's interests.

Also, in circumstances where an operator is unwilling to include its contractors within the definition of his group, the partnering agreement may achieve the same result by providing a structure creating a web of mutual cross indemnities as between alliance partners. These "web" type indemnities need careful consideration if they are to be effective. Compliance with the doctrines of privity of contract and consideration needs due care and attention.

A lead contractor in an integrated services alliance may be responsible for the provision of a range of services which are in reality being provided by subcontractors. It is important to ensure in these circumstances that contractual arrangements with the sub-contractors adequately protect the contractor. In particular, you should remember for instance that Scots and English law treat quite differently the question of incorporation of clauses by reference from a main contract into a sub-contract. In this connection I refer you to the Scots law *Miller*[2] case.

In sharing risk and reward, warranty provisions should be carefully considered. The impact of evergreen warranties should be understood. Their interaction with indemnity provisions should be considered. The difference should be clearly understood between equipment or services being provided to an agreed specification as different from "fit for purpose" or "to Operator's satisfaction". Also liability exposure through performance risk (for example), since performance targets in OPEX gainshare schemes linked to production profile are increasingly common. These provisions need careful consideration.

In establishing gainshare arrangements, alliances contain complex incentives and gainshare schemes. LDs, warranties, gainshare and the indemnity provisions will all need to cross-refer and the interaction of clauses must be clearly understood.

Further, when setting the targets it is critical to align the parties' focus on success. If the target cost contains too much profit, contingency, overhead, etc., some parties may have entered into the arrangements having already assumed and made provision for downsideshare. Further, ensuring capped downsideshare is complete and without loopholes is essential to avoid an unanticipated liability.

The parties must clearly understand, whether joint and several liability is or is not created and, from both the oil company's and contractor's perspective, the implications of the contractual provisions need to be clearly understood and the procedure for termination and withdrawal should be addressed in a multiparty alliance arrangement so that all parties are aware of their liability exposure for performance risk in such circumstances. Partnering transactions cannot be subject to traditional termination clauses for a

2 *Miller Construction Ltd v. Trent Concrete Cladding Ltd*, Court of Session (OH) decision of August 4, 1995.

whole range of reasons, but in particular with regard to accommodation of complex incentive schemes. Lawyers must carefully assess and write clauses which enable the transaction to work effectively.

Typically, partnering arrangements comprise a series of documents, and the priority and interaction of these documents is important. The partnering philosophy and the incentive schemes, on the one hand, and traditional liabilities and indemnities, on the other hand, do not sit very comfortably together and the implications must be carefully assessed.

Many alliance structures will comprise a traditional contract together with a separate partnering agreement. It is important to ensure that the partnering agreement does not dilute the indemnity provisions of the main contract.

Some of the most recent arrangements have been formed with a single document which is helpful for the parties in terms of clarity and assists to streamline the alliance members as a single team unit.

Agreements which encourage success rather than protect interests may not sufficiently, or at all, deal with resolution of disputes—but this together with the powers of the alliance board should be considered. The principle of silence in these areas can work where both or all parties are genuinely committed to the ideals and to management of issues internally and where they specifically "try" to close off the route of legal redress. However, partnering works as a team, and the more parties involved, the greater the risk that one party finds that it is unable to stand by that commitment, particularly if it is faced with significant and unexpected loss and others may be "to blame".

Traditionally, disputes are settled first by the project management team, thereafter at alliance board level and finally by CEOs.

These are some of the legal issues. Excluding lawyers from the detail of partnering agreements is not a solution. The issues can be addressed and managed in a non-adversarial way and by including lawyers in the team. In this way arrangements emerge without destroying the essence of the freedom of partnering, through the use of creative and innovative legal input.