

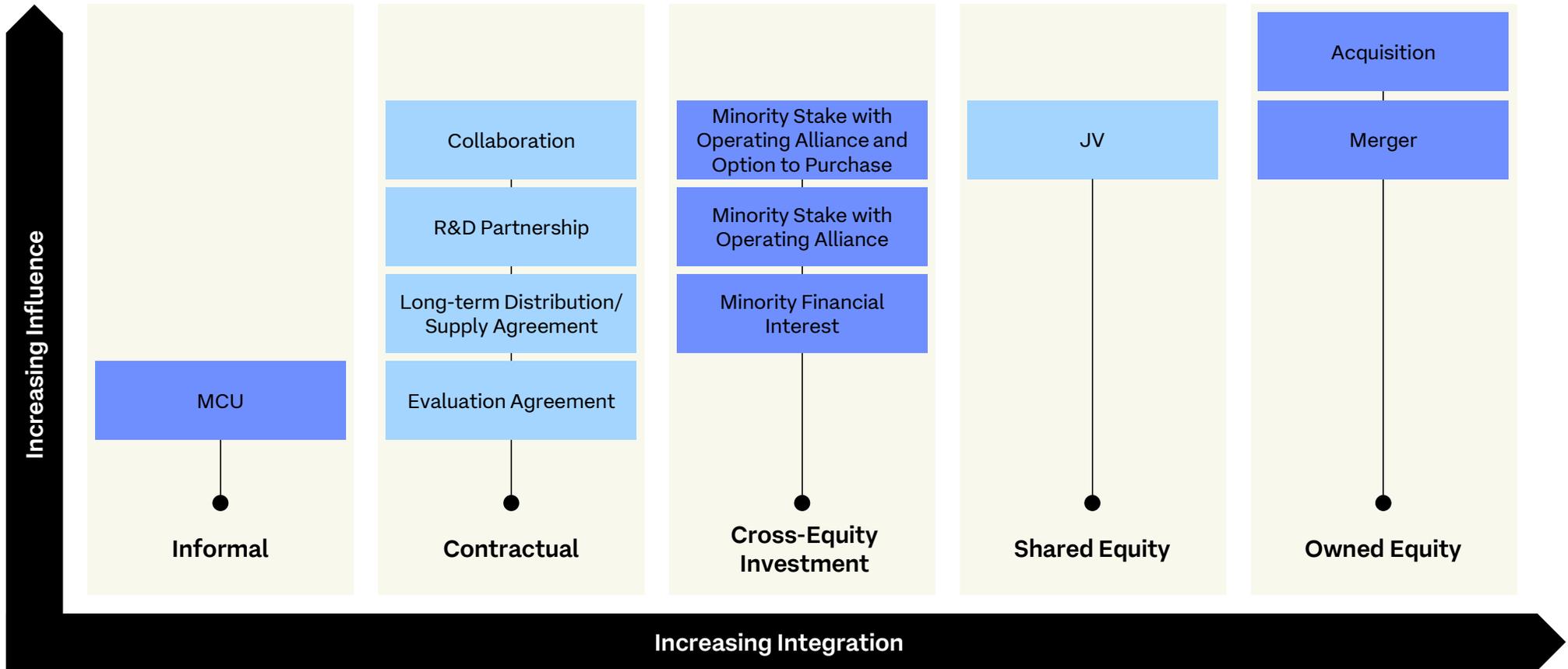
Life Sciences Deal Structures: Practical Considerations and Lessons Learned

Frank Freeman, Siddharth Kishore, Kristen Riemenschneider, Jake Silvers,
Madeleine Tavcar, and Ali Muffenbier

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Transaction Spectrum



Key Drivers of Deal Structure

- Financial Terms
- Risk Allocation
- Pipeline Programs
- Accounting Treatment

- Control
- Tax Efficiency
- Financing/Liquidity for Investors
- Bankruptcy Risk

Driving to a Structure

- Understand the strategic motivation
 - Why are you partnering? *Access to IP/technology, expertise (R&D, commercialization), access to customers, access to new markets, sharing of costs, spread the risks, faster time to market*
 - Avoid doing a deal just for the sake of doing a deal or desire to create a stock bump
- Choose the right partner
 - Consider financial alignment, ethics, and commitment to patients
- Manage counterparty risks
 - Establish processes to learn about the problems before they grow (ex., detailed schedules with timelines and performance metrics)
 - What happens if a party fails to perform? *Schedule changes, liquidated damages, effect on ownership, termination rights*
 - Think about disclosure (if a public company) early
- Plan for the long term
 - Review practicality of timelines and budgets over 5–10 year horizon
- Trust your instincts

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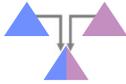
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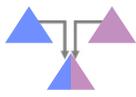
Appendix

Value can be captured through different kinds of partnerships...

Increasing integration →

	Arm's length contract	Alliance	Joint Venture	M&A Acquisition
				
Definition	<ul style="list-style-type: none"> Typically, single-purposed (eg, tech integration, channel, licensing, long-term purchase or supply arrangement), contracts creating a value-added packaged offering Arm's length – in each party's independent commercial interest Coordination by contracts/constant negotiation 	<ul style="list-style-type: none"> Partners combine individual strengths – no new entity Range of resources made available to partners (potentially on exclusive basis), but remain inside parents – no shared ownership Often focused on a particular project - alliance facilitates access and close collaboration Coordination by contracts/constant negotiation – but keep in mind antitrust considerations 	<ul style="list-style-type: none"> Partner contributions made to new legal entity, which is owned by the partners (respective stake sizes may vary) Operationally led by separate management team, sharing capabilities and risk, with JV partner oversight Can be a “full-function” JV, or require operational support from one or more partners 	<ul style="list-style-type: none"> Full integration of a business unit by acquiring and consolidating within the group of one party Conceptually an alternative to partnership, rather than a type of partnership, but can also be a form of exit from an arrangement that starts as a JV between partners
Example	Supply contract for products / components between a manufacturing party and a distributor	Two parties join forces to collaborate on the co-development of a new product	Two parties incorporate a new joint venture company to research, develop and ultimately manufacture and sell a new product	A party acquires the business and assets of a manufacturer

... while there are no hard and fast rules, there is a set of strategic conditions under which different structures are more common

	Arm's length contract	Alliance	Joint Venture	M&A Acquisition
				
Reasons to choose	<ul style="list-style-type: none"> Objective is straightforward and within the capabilities of business teams in parent companies to manage as part of normal business Contracts are sufficient to motivate both sides to mutually beneficial outcomes without additional incentives or commitment Value allocation easily fits within historical precedent for similar contracts 	<ul style="list-style-type: none"> Commitment to partnership is broad and deep, but fits within existing capabilities of parent companies Single project or narrow business scope of relatively low risk, not requiring shared ownership in joint legal entity Venture requires limited amounts of capital or other investment to be allocated to the alliance Mutual desire for knowledge, expertise, access (e.g. to distribution networks or geographic markets) or other resources of the other partner 	<ul style="list-style-type: none"> Opportunity is new or emerging, and neither organization could easily administer partnership with existing organisation structure Significant investment or capability sharing required and/or risk is assumed by JV Desire to align financial outcomes by pooling equity Partners are potentially competitors in other markets/geographies, and JV allows for arm's-length interactions Can be structured as hybrid/option-based JV (i.e. collaboration phase now, JV later if milestones hit) 	<ul style="list-style-type: none"> Once acquired, business can be run effectively within existing organisation structure Potential up-side (either financial or due to ability to leverage capabilities of the business to benefit other parts of the organisation) means that organisation desires full exposure, and risk can be managed or tolerated Potential for non-alignment if pursued as partnership means there is desire to have full control

Bankruptcy Considerations

Executory Contracts

- A contract is executory if performance remains due to some extent on both sides at the time the bankruptcy petition is filed
- While in bankruptcy, the debtor may seek Bankruptcy Court approval to:
 - Assume,
 - Assign, or
 - Rejectits “executory contracts” and leases
- IP license agreements are generally considered executory contracts

IP License Agreements: Special Considerations

- In a distressed asset sale, the Bankruptcy Code provides that a debtor is able to freely assume and assign a contract to a third-party notwithstanding contractual restrictions on assignment in most circumstances
- The assignment of IP licenses is one of the circumstances in which consent from the non-debtor contract counterparty may be required to assign the contract
- There are other special considerations for non-debtor licensees in bankruptcy

Bankruptcy Considerations cont'd: Assignment of IP Licenses

Category	Outcome	Relevant Rule/Law
Debtor is licensor, wants to assign the contract to a third party	<p>A licensor should be able to freely assign its licenses under Section 365(f), notwithstanding contractual restrictions on assignment</p> <p>The license retention rights implicated by Section 365(n) do not apply because the license is being assigned, not rejected</p> <p>Section 365(c) does not apply because the debtor is the licensor, not the licensee</p>	Section 365(f)
Debtor is licensor, wants to reject the contract	<p>Debtor may reject the contract and is excused from performing all other obligations under the rejected contract</p> <p>However, licensee may continue to use its licensed intellectual property pursuant to section 365(n). Licensee retains no other rights under the contract</p>	Section 365(a); 365(n)
Debtor is licensee, wants to assign the contract to a third party	<p>Non-exclusive licenses: debtor may not assign the contract unless the licensor consents. Applies to all categories of IP licenses</p> <p>Exclusive licenses:</p> <p><u>Copyright:</u> likely assignable without consent in Delaware, likely not assignable without consent in California</p> <p><u>Patent:</u> likely assignable without consent in most jurisdictions</p> <p><u>Trademark:</u> likely not assignable unless licensor consents in all jurisdictions</p> <p>Note: Look for consent already contained within the terms of the license agreement. Some contracts outline circumstances where assignment is permitted – eliminates the need to seek additional consent from the licensor</p>	Section 365(f)
Debtor is licensee, wants to reject the contract	<p>Debtor is free to reject the contract</p> <p>Section 365(c) applies to assignments, not rejections</p> <p>Section 365(n) does not apply because the debtor is the licensee, not the licensor</p>	Section 365(a)