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The Virtual Organisation

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Abstract

There is now strong evidence that we are in the midst of an information revolution that will parallel the agricultural and industrial revolutions that preceded it. The reasons behind this are many, but include rapid technological advances coupled with profound political, social and economic change. Throughout the world, production systems, methods of organising work and consumption patterns are undergoing major change.

History illustrates that there is often a time gap between the introduction of new technologies and their effective use. Information Technology has previously been used to automate existing working practices. Business organisations now realise that the real gains from deploying technology are not using it to do existing things better, but using it to do things the way they *should* be done.

Possibly the most exciting of these new technologies is the development of Virtual Organisations.

Keywords

Virtual Organisation, Strategic Alliance, Letter of Intent, Consortium.

1 Defining “Virtual Organisation”

The Virtual Organisation should be defined as a strategic alliance amongst non competing companies who share forces – using mostly the Internet – for the accomplishment of a specific goal, without losing their autonomy – except for the undertakings set forth in the Virtual Organisation agreement – and without forming a new legal entity.

The specific features of Virtual Organisation can be synthesised in: a) no creation of a new legal entity; b) limitation of scope (one or more specific projects); c) complementarity of partners; d) use of information and communications technology; e) use of “virtuality”.

2 Defining “Virtual”

In order to illustrate the different views on virtuality and the different views on virtual organisations, we will give below four definitions from literature:

1. "A Virtual Organisation is an organisation network, which is structured and managed in such a way that it operates vis à vis customers and other external stakeholders as an identifiable and complete organisation".

The underlying idea of this definition is that a VO is identifiable as **one organisation**, but in fact **consists of many different organisations**.

2. "The Virtual Organisation is a temporary network of independent companies linked by information technology to share skill, costs and access to one another's markets. The companies quickly unite to exploit a specific opportunity and will disperse afterwards".

This definition encloses three views on virtuality, namely: **immaterial, supported by ICT; potentially present and also existing, but changing**. Potentially present, because when the co-operation is disbanded it can be initiated again the next time a new opportunity occurs.

3. "A Virtual Organisation is a combination of various parties (persons and/or organisations) located over a wide geographical area which are committed to achieving a collective goal by pooling their core competencies and resources. The partners in a Virtual Organisation enjoy equal status and are dependent upon electronic connections (ICT infrastructure) for the co-ordination of their activities".

The main characteristic of this type of VO is, that **it is based on ICT**. Because of that, the second view of virtuality applies for this definition.

4. "A virtual organisation is primarily characterised as a network of independent, geographically dispersed organisations with a partial mission overlap. Within the network, all partners provide their own core competencies and the co-operation is based on semi-stable relations. The products and services, which a Virtual Organisation provides, are dependent on innovation and strongly customer based. Besides that, a Virtual Organisation is secondarily characterised by one identity, where the loyalty is shared among the partners and the co-operation is based on trust and information technology. Next to that, there is also a clear distinction between a strategic level and a operational level".

3 Different kinds of Virtual Organisations

Which characteristics a Virtual Organisation has, or does not have, is also dependent on the kind of Virtual Organisation:

- **Internal Virtual Organisation:** This sort of VO applies to one organisation, which aims at operating with internal teams. Such a VO consists of several business units, which exist again of autonomous groups and teams. The management tasks are often carried out decentralised by the autonomous teams. The employees are available on many different places, which is the reason for the flexible structure of the organisation.
- **Stable Virtual Organisation:** This sort of VO is based on the co-operation between different organisations and aims at contracting non core-competencies out by a 'main'-organisation (often a core partner). These non core-competencies are contracted out to the several committed suppliers, which are closely related to the 'main'-organisation.
- **Dynamic Virtual Organisation:** A dynamic VO co-operates on a large scale basis with other organisations. The relations with these other organisations are based on opportunism and are always temporary. So the co-operation takes place when certain market incentives occur. This way of organising offers a great deal of flexibility.
- **Web-company:** The web-company, often called 'agile organisation', is a temporary network of specialised organisations based on the use of the Internet. It aims at globally offering all sorts of products and services by using the Internet. Knowledge management and knowledge sharing between the co-operating partners is essential for a good functioning of the VO.

4 The agreements

During the Virtual Organisation's life cycle, the relationships between the parties should be regulated with different agreements.

4.1 Letter of Intent

A Letter of Intent is probably the most suitable method for negotiators to secure a statement of operating principles between companies which is later supplemented by a detailed agreement.

The need for a Letter of Intent could arise for varying reasons:

- for recording a particular stage of the negotiations - the beginning or the intermediate or concluding stages;
- for internal requirements such as the definition of a negotiating procedure;
- for external requirements such as the need for some kind of document to be produced to third parties;
- for obtaining their prior approvals, or to apply for a financing or other kind of grant.

Conceptually, Letters of Intent can be drafted to achieve at least four distinct results:

- They can be binding contracts obligating the parties to conclude the definitive agreement if stated and objective conditions are satisfied.
- They can be binding contracts limited in scope to basic protective provisions (e.g. respecting confidential information and parties' investigation) that are necessary for the parties to engage comfortably in the negotiating process.
- They can reflect an exchange of commercial assurances, backed by commercial sanctions, without any pretext that they are binding contracts.
- They can be devoid of any sanctions at all, even implied ones. Under these circumstances they serve merely to convey information.

We believe that the execution of a preliminary document containing both binding and non-binding provisions is the best strategy to set the minimum obligations and rights between the potential partners.

4.2 Consortium Agreement

The subsequent phase is the drafting and negotiation of the Consortium Agreement ("CA") which is the agreement regulating the life and activity of the Virtual Organisation. The CA is particularly important due to the legal nature of the Virtual Organisation, which is not a legal entity and does not have a recognised legal status.

The purpose of the CA is to clearly and definitively identify the mutual responsibilities, obligations and rights between the Partners and between the Partners and third parties.

The CA is the constitution for regulating the relationships between the parties, covering not only acts contemplated in the present but (if correctly drafted) future acts which may not even be foreseen by the participants.

The most important clauses of CA are:

1. Performances, resignation and termination of the Virtual Organisation;
2. Relief from liability for consequences of failure to perform contractual obligations;
3. End of contract;
4. Unilateral suspension and termination.

4.2.1 Performances, resignation and termination of the Virtual Organisation

Among the Parties: failure to carry out a contract correctly may constitute breach of contract. It is therefore important that due attention be paid to what constitutes failure to perform. Failure to perform in any instance implies the liability of the defaulting party; and this liability may entail pecuniary and/or other consequences. For the affected party, such consequences may be seen as remedies and means of redress. In certain circumstances, the consequences for the defaulting party may be either limited or excluded.

By third parties: the parties should consider how failure to perform by third parties might affect their contractual relationship. The parties may be liable for the failure of a third party to whom they have assigned the contract, or a part thereof, with the consent of the other parties. The parties may agree which of them should be liable finally for the failure of third parties, and may accordingly arrange for insurance of their respective liabilities.

Consequences: the parties should provide in the contract what the consequences are of failure to perform contractual obligations, although the consequences of such a failure may be found in the applicable law. One advantage of this approach is that the consequences accord with the degree of seriousness of the breach of contract in each particular relationship. In particular, the parties may draw a distinction between failures of a significant and of an insignificant nature.

The parties may utilise penalties as a means of pressure, which one exerts on the other in order to cause the latter to perform its contractual obligations in time.

The parties may stipulate that failure to meet obligations by one of the parties entails the liability of that party to pay compensation to the other parties for damages actually sustained.

It could also be agreed the payment of both penalties and damages: in such instances, penalties may be additional to the payment for damages. If clauses are inserted in a contract concerning both payment for damages and penalties, the relationship between these two categories should be clearly defined. It should be pointed out that in some countries penalties are deemed to be contrary to public order or may be controlled as to amount by the courts. Liquidated damages are then used and are considered to protect in advance what might be losses for one party owing to the other party's failure to meet its obligations.

4.2.2 Relief from liability for consequences of failure to perform contractual obligations

The parties should provide in their contract for those situations which might bring relief from liability for consequences of failure by one of them to perform its obligations. In the absence of such a provision, solution should be sought in the applicable law.

There is usually a clause specifying that a party is not liable for failure to perform any of its obligations if it can prove that the failure was due to an impediment occurring after the signing of the contract, and which was beyond its control, and that it could not reasonably have been expected to have taken the impediment into account at the time of the conclusion of the contract, or to have avoided it, or overcome it, or its consequences. Examples of such situations are: war, civil strife, interference by public authorities, fire, natural disasters, etc.

4.2.3 End of contract

The parties should indicate in their contract how it is expected to end. The contract normally expires on the date of completion of respective obligations.

The contract may end before the expiry date through unilateral termination in the event of failure of a party to perform its contractual obligations or, in the event that the parties have agreed on the possibility of the contract being unilaterally terminated, when the conditions specified below have been met.

The termination of a contract may result from relief from liability or changed circumstances.

Finally, the parties should specify in the contract the document assessing events by which the contract might be terminated (certificate of delivery or of successful test run or of anticipated termination agreed upon by the parties, etc.).

4.2.4 Unilateral suspension and termination

The parties should stipulate specific circumstances or special reasons for termination of the contract, and ways in which either of them might unilaterally suspend or terminate it. One reason might be suspension or termination of the main contract. As to the method, it might be agreed

that the party wishing unilaterally to suspend or to terminate the contract may do so only by written notice and by observing a specified term. This right is in addition to the right of suspension and termination arising from failure of a party to perform its contractual obligations and relief from liability for consequences of such failure.

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