

**Technology Transfer through Joint Venture**  
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**Lecture – 02**  
**Negotiations and Contractual Aspect**

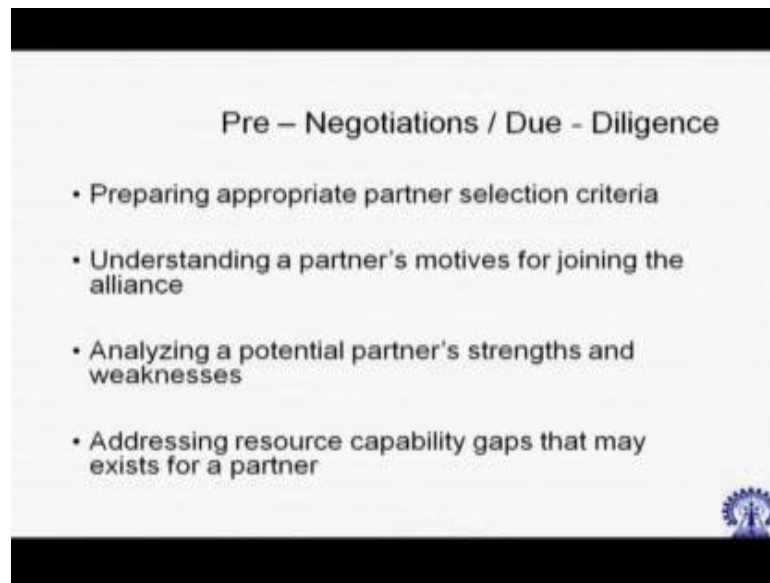
Welcome to second lecture of how technology transfer can be facilitated through strategic alliance. Now, I will talk with you regarding the negotiation and contractual aspect of strategic alliance.

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There are various stages in case of negotiation of strategic alliance. Mainly, we can divide these stages into a two broad category. One is a pre-negotiation or due diligence. And, the second one is contract negotiation. So, let me take you through the understanding of pre-negotiation or due diligence.

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Now, whenever you are going for a technology acquisition, one of the important things is that how you are going to choose your partner. So, you should have some set criteria placed before you start this strategic alliance process or before you think to enter into a strategic alliance; because if your partner is not right, if you are not chosen a right kind of technology, if you are importing the technology which has a lot of difficulty to manufacture in the environment, where you are importing that particular technology or if that particular technology is a capital intensive and the market where you are importing that particular technology, people are unable to pay for the cost of that particular technology. Then, in that case your technology import or strategic alliance might not sustain for a long time. So, one should be very careful while they are choosing their partners. And that is a reason you should prepare selection criteria for appropriate partners.

Now, while you were preparing these selection criteria, what are the things you should keep in mind? The first thing is the type of organization with whom you are entering into a contract. Second thing is that the person with whom you are entering into contract, do they have a technology with their own or they have basically licensed the technology from somebody else. And, they have developed on that particular technology. And, you wanted to enter with that particular company. Then, in that case there might be lot of hidden issues with that particular company. And, you should be aware of that thing.

Third thing might be what are the type of, you know, equipment is required for absorbing that particular technology or to manufacturing the product by using that particular technology. And, if you are producing that particular technology, what are the process cost or what are the manufacturing cost of that particular product which you are going to use with that particular technology. Please remember, in the world for a same kind of product or similar kind of product, there are alternative technologies are available. And, while you are choosing your partner you also should focus about what are the alternatives available before you. And, you should be careful about, you know, choosing that particular alternative.

The next thing is you should also be aware of the fact that what are the, you know, lifespan of that particular technology. That means, you today, you basically you know absorb a technology or import a technology and you found that after couple of years of time that particular technology is changed and new technology has come. So, you should be, you know, in a position to change that particular scenario or you already found that there is a new technology has been developed. But, you are basically importing or you are basically, you know, absorbing an old technology. Then, in that case you are going to be at loss.

So, choosing the partner or selecting the criteria is one of the very important things, in case of this strategic alliance. And, please do remember that the selection criteria are going to help you in your sustenance of the business at the same time sustenance of your product in the domestic market. As well as if you have a foreign ambition to export this particular product in the foreign market, then also it will going to help you.

So, I just gave you some understanding about, you know, selection criteria, but it should depend on the type of sectors, you are, you are entering into a strategic, you know, alliance or it is also depend on type of business where you wanted to enter into a strategic alliance. Or, it is also even depend on the regulatory structure which is prevalent of that particular market, where you are going to do this particular strategic alliance.

So, this is also known as a due diligence. And, please do remember that this due diligence process is a very crucial thing because if you fail in due diligence, then it might lead to failure of strategic alliance too. Or, you might spend a lot of capital energy time.

But, at the end of the day you might not be able to achieve whatever you wanted to achieve through this particular strategic alliance.

Second important thing is that understanding the partner's motives for joining this particular alliance. Why the partners are interested to join you into this particular strategic alliance? Is it that he wants to expand his business into a new market? Is it that he wanted to have understanding about this particular new market? Is it that it wants to, it want to, you know, transfer those particular technology which they found that well, they are no good into the market where they are doing this particular business, so, they wanted to dump that particular technology? Is it that they think that well for their sustenance they had to stay in another market for a longer period of time? Let me give you some examples, which make you understand this particular thing.

Possibly, well, aware of the fact that blackberry is one point of time known to be very good smart phone. And, they used to say that, well, this is a (Refer Time: 08:30) email you can get out of this particular blackberry. And, one point of time when this iPhone came into the market, they actually started sinking from their business into this developed market like, you know US, UK, Canada. Even their home country Canada, Australia and so on and so forth, once they started finding, they started finding those particular market where they do not have a initial base like, you know Indonesia, some of the Latin, American country, some of the Asian country which is underdeveloped or just developing. And, they wanted to have their sustaining revenue out of this particular market. So, there can be, you know, several intentions for a company to partner with you, but you should be very careful why they are interested to partner with you.

It might so happen that the company found that, well, you have a lot of natural resources where you are doing this particular business and they can source this particularly resources at much cheaper costs than whatever they are sourcing in their, you know, own country or host country. So, they wanted to have alliance with you. You know it might be the minerals, it might be even the labors, and it might be even the cheap capital which is available, so much, so forth. You know that there might be reason for the people to understand that why, you know, they wanted to partner with you.

The next important thing is that you should understand the partner's strength as well as the weakness too. Now, your partner might be very good in the development of the

technology or even, you know, further in building of the technology. So, to put it other way round, they have a very strong R and D team. But, your partner might not be very good in marketing of the product; your partner might not be very good relating to raising of the fund, which is required for expansion of the business; your partner even might not be good to manage a particular, you know, affair into a market.

So, you need to understand that where they have strength and where they have a weakness; because if you find that well their weakness is your strength then it is a good collaboration or good, you know, strategic alliance to go ahead with because you can then really supplement to each other. But, wherever you have a weakness and they have a weakness and you wanted to have a combination, then in that case it might lead to a fatal combination. So, you should be careful into this particular thing.

Second thing is that most of the time you will find wherever people go for this strategic alliance, one of the partner want to be a very dominant partner into this transaction. You need to be careful on that particular account also; because if you do not have a control at the end of the day over the entire process of strategic alliance, then there is a no point to enter into a strategic alliance. Even, I will advise that at that particular point of time, it is good to have a technology transfer, instead of the strategic alliance because in that particular context, the cost of transferring the technology will be lesser than that of a strategic alliance.

Please do remember, which I have told in the last lecture also that while you are going for a strategic alliance, most of the time revenue model is a profit sharing. And, if it is a profit sharing, then in that case you basically sell a lot of money with your strategic alliance partner. So, if you are not in a same platform, if you find that your strategic alliance partner is a dominant partner, at the same time they have many weaknesses that what about the technology they wanted to transfer, then in that case you should be careful.

So, what I will see that see, you know, these particular witnesses cannot be understood or cannot be discovered by one sitting. Rather, you need to have a continuous exercise of diligence throughout the deal, even, you know, before you start this particular deal. So, I generally advise the people that you should first, you know, understand about this particular company whatever the information is available in a public domain. So, you

should do a proper homework. And then, you will try to find out that what is the information which you are looking for is not available in the public domain. So, go and get that particular information from these particular people.

If necessary you sign a non-disclosure agreement with that particular company because that is one of the very important thing, if they want to share some of the sensitive information to you which you are not supposed to divulge, except for this particular strategy, except whatever you can use for this particular strategic alliance. Furthermore, you should have a dedicated team who is going to do all the time this particular due diligence and they are going to unearth information which is required for you before you really sign this final strategic final strategic alliance agreement or so much, so forth.

Now, the next thing is that you need to address the resource capability gap that might exist for a partner. And, this resource capability gap might be many for, it might be, you know, out of the capital, it might be out of the manufacturing process which they have, it might be relating to the cultural issues, it might be relating to many other things. Let me, you know, try to give example; one of the examples of this particular thing.

Sometimes, it so happened that the Japanese company has acquired a company in Greece. And, you possibly aware of the fact that you know two countries work culture is totally different from each other. In case of the Greek, Greece people think that well, you know, work is necessary part of the life. But, apart from that you have to have a quite a good leisure to have a good work. But, whereas if you look into the Japanese process, you will find they are more on, you know, efficiency and giving the product in time and all those particular thing.

So, sometimes if you have placed the Japanese manager in a Greece factory, then you will find that it is not going to give you a desired outcome. Similarly, you know the cultural difference might create a lot of problem, if you wanted to go for a strategic alliance. So, at that particular point of time, so you need to understand these particular resource capabilities because please do remember which I was discussing other time also. Under this strategic alliance, you need to bring some trained people within your organization to train another group of people within your organization from the company who is transferring the technology; because at the end of the day, your objective is that

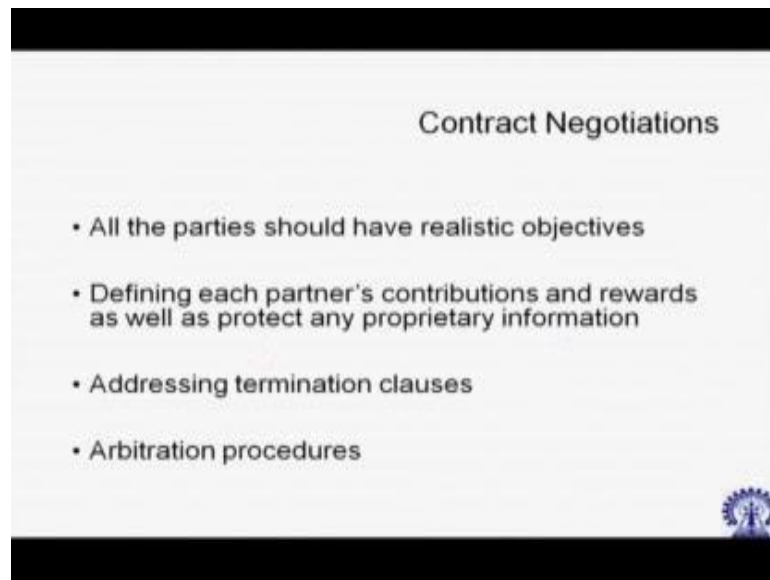
you want to absorb the technology within your organization, so that you can grow tomorrow independently without the support of your partner.

So, the due diligence process is one of the important thing. And, you should be careful about this particular due diligence. So, here I have given you a four pointer, but it is not all you might have a more pointed than this. And, you should know what are the things you should add with this particular thing; because as I told you it is depend on the sector where you wanted to go for SA. It is also depended on the market where you wanted to go for SA. It is also depended on the technology where you wanted to go for strategic alliance or SA, so much, so forth. So, you should be expanding these indicated, you know, based on the business dealings, which you wanted to, enter upon.

And, please do remember many of the time, even the regulatory due diligence is also one of the important thing; because you might have everything, right, but at the end of the day you will find that you really cannot transfer this particular technology or enter into a strategic alliance because the law of your country do not allow you to do so. Like, in case of the India you will find, we are going for flexible norms, but if you have looked into the regulatory norms, even ten years or twenty years before, you might have seen that we have a very complex compliance regime.

And, if you really track these particular issues, then you will find that India is used to be quite low in rank in compared to other countries in ease of doing the business because compliance requirement in India was very high. But, this government is trying to easing out this particular process. And, they are trying to facilitating more this particular joint venture, and, strategic alliance to be incorporated in our country by using these particular norms of doing the business.

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Now, let me take you to the next issues of strategic alliance, that is, a contract negotiation. Now, as I have said that the precondition of or pre-negotiation of due diligence is that to know your partner well that you know what is their strength, what is their weakness, how they can benefit to you, what is their motive to entering into relationship so much so forth.

Once you do that, the next stage is that how to negotiate the contract; because as I have told to you that it can be very formal contract or hard contract or it can be a flexible contract, in terms of memorandum of understanding or you know memorandum of association so much, so forth. So, in those particular circumstances whatever you do, either you go for a hard contract or you go for a soft understanding of the relationship, you need to go through the agreement process or you need to go through the contract negotiation because contract negotiation is a stage before you sign the formal agreement with your partner.

So, while you do the contract negotiation, you should keep couple of things in your mind. The first thing is all the parties should have a realistic object. Many of the time you will find some people are very ambitious while they are entering into strategic alliance. But, you should be grounded into your objective or the ambition, whatever you wanted to achieve out of this particular strategic alliance, please do understand that well, you know, when you are hand shaking with your partners you are basically, you know,



unknown entity to each other. And, there is a lot of constraints. It can be internal constraints. And, some constraints may be external constraints. Even if you have a lot of willingness to go ahead, but these particular constraints might not allow you to go ahead the way you wanted to go ahead.

Like, possibly you thought that, well, you are going to start the project within two years of time because you thought that, well, wherever you are putting this project, you have a lot of government support. And, the government really wants this particular project to get through. But, you might find that at the end of the day, there is this kind of a political agitation, you know, outbreak into this particular project.

Let me draw your attention in this. Like, you know it is not relating to example of SA. I mean strategic alliance or the joint venture. But, it is something like, you know, putting up the new project or a new understanding like, you know, as TATA has put up the project in India in West Bengal relating to the nano. All of you know it is in Singur. And, Tata thought at that point of time that government was interested in that project. They were supportive to this particular project. So, they can really get through this particular project. And, the West Bengal has a stable government for last thirty years, but you know you all of you have seen that there is a political agitation. And because of that particular political agitation, the project has to be, you know, wind up from West Bengal and it has to be shifted to other state.

So, what I was trying to talking about that there might we have a lot of wrecks around. Some wrecks which can be, you know, predictable; some wrecks which is obvious. So, you try to control those particular wrecks. But, even some of the wrecks after having understanding and you have taken adequate measure, those particular wrecks might not be able to control.

So, you should be realistic into your objective. And, at the same time you should have a number of options available before you, if one does not work, then in that case how you are going to go shift to the second one quickly, second plan quickly, so that you can really, you know, execute the SA which you wanted to do.

Second thing is defining, you know, each other contribution and reward as well as to protect any proprietary information. This is a very very serious thing. And, you should be taken, it this particular thing in a lot of seriousness.

Let me start with the last point that is protecting any proprietary information, like when you are going for strategic alliance. Many of the time, you basically share many sensitive information to your partner or your partner shares many sensitive information to you. This sensitive information may be relating to your organization, set up this sensitive information may be relating to the management. This sensitive information may be relating to the financial issues of your company.

It might be relating to the, you know, regulatory or legal difficulty which the company is facing; it might be relating to the technology which you are wanted to negotiate on so much, so forth. And, this particular information people share because they are having a intention to go ahead with the partnership with you. So, if this particular partnership did not work, there is every possibility that this particular information spill over into the public domain. And then, your opponent; that means, the company who wanted to transfer those particular technology or you, as a company, who wanted to receive this particular technology might face difficulty into the market or from your competitor into the market. So, you need to protect both of your interest into during this particular negotiation process. Not only the negotiation, during the time of negotiation, even after the negotiation too.

So, it is always advisable that you should enter into non-disclosure agreement NDA. And, while you are drawing the NDA, you should be meticulously put all the point into this particular NDA. I generally, suggest the people that you know before you enter into NDA, please draw a checklist and then, mutually fed this particular checklist, both this particular party before you sign this particular NDA. What is this particular checklist? Checklist means, the item which you wanted to cover under this a non-disclosure agreement. And, you put those particular things in a meticulous manner.

Sometimes, you know you need to go much deeper into the understanding of this particular thing; because sometimes you might think that, well NDA has covered some of the information, some of the item. But, at the end of the day when you will find the dispute arise that there is no coverage on those particular matter. So, this is a complex process. And, you should always take a help from the professional to do this particular thing or even if you do yourself, then in that case you should educated yourself that what are the information which you are going to share each other.

Now, next important thing is that the partner contribution and the rewards. Now, how the partner is going to contribute? Is your partner is only bringing the technology to you or your partner also, not only the bring bringing the technology to you, they are also bringing the capital for this particular strategic alliance or they are also bringing some of the experience which you do not have to do the business relating to this particular, you know, product. So that, you also are very, you know, clear into these particular issues. Like, you know, if you think that, well your partner is bringing the capital either in form of a equity or the debt, then in that case you are required to enter into agreement that how you are going to, you know, going to utilize this particular capital, and then if the partner at any point of time, exit this particular organization, then in that case what are the options available with them.

Now, when you are talking about the rewards, we basically talk about the profit sharing. But, you know meaning of the reward is more than a profit sharing. It might be relating to the sharing of the technology, which you have developed out of this particular strategic alliance; it might be relating to sharing of the goodwill or the brand value which you have developed through this particular strategic alliance; it might be sharing of the supply chain or kind of an establishment which you have developed through this particular strategic alliance.

So, whatever it may, you should be very clear on this particular thing. And then, in that case you have a clear understanding into this particular process. Again, my suggestion is that you should prepare a checklist and you should know what are the matter to be included into this particular agreement. And, some people suggest that you should have umbrella agreement; that means, you are going to include everything in a single agreement, but my suggestion is that instead of doing that you should have a combination of agreements or there should be a number of agreements we should enter upon. And, you know that will basically facilitate in execution processes and later on.

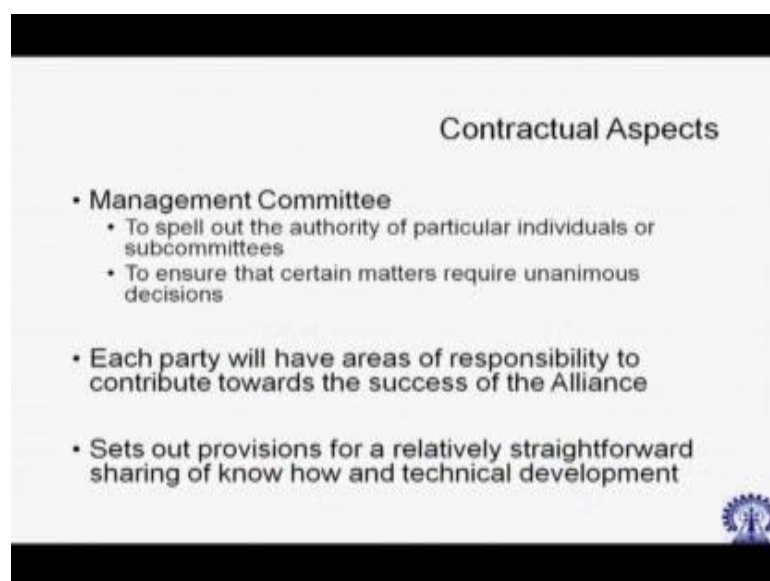
Now, the next thing is that you should be aware about the termination clause that you know what are the exit option is available and how you are going to make this particular exit; because you know exit is one of the contentious issues, if there is a dispute arise between these particular parties or even there is a change in the law or the regulatory regime, then in that case also it creates a problem; because if your partner, you know, exit your organization by selling their stake to some other company which align to you

you, you might be in the trouble. Or, at the same time you might find that, well, some, there is a change in regulations. And, they said that, well, you have to reduce the stake of your foreign partner into this particular strategic alliance. So, in those particular circumstances, how you are going to handle this scenario; that you should clearly define in this particular agreement itself.

And then, you know the process of arbitration. Now, process of arbitration is important because many of the time your partner might not be interested to adjudicate the dispute into this, you know, land where they are basically, you know, doing the business. It might be because they might think that, well, your judiciary is taking a lot of time to solve the dispute and it is detrimental for their business. Or, many of the time they think that, well, whatever the law which is prevalent in your country, they do not understand better that particular law.


So, they might ask for some kind of, you know, foreign arbitration. Or, they will look for the arbitration in an independent jurisdiction, then both of your jurisdictions like, you know, like you know if your partner is from Germany and you are from India, they might ask for a jurisdiction of Singapore because Singapore has a reputation of a successful arbitration and quicker arbitration. And, they might ask you to insert those particular laws into the agreement. So, you should be prepared for this particular issue.

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**Contractual Aspects**

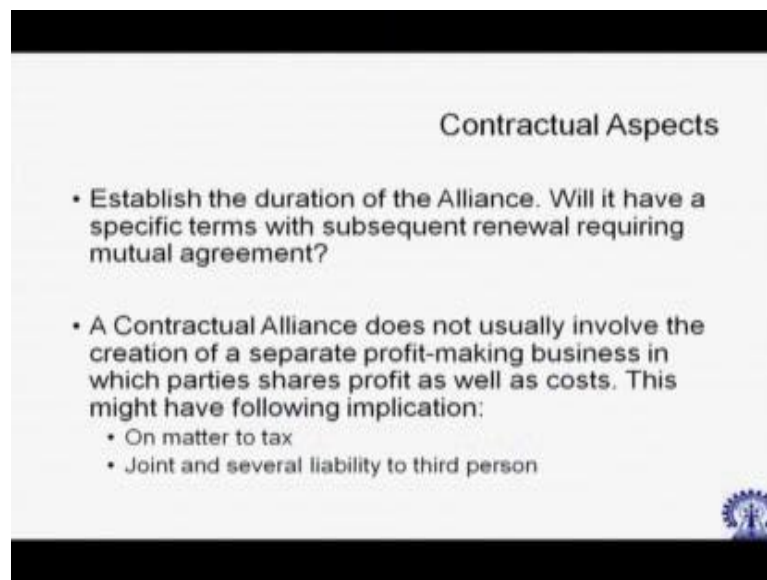
- **Management Committee**
  - To spell out the authority of particular individuals or subcommittees
  - To ensure that certain matters require unanimous decisions
- Each party will have areas of responsibility to contribute towards the success of the Alliance
- Sets out provisions for a relatively straightforward sharing of know how and technical development



Now, what is the aspect you should include into your agreement? You should include in your agreement the concept relating to the management committee. And, the management committee should spell out that how you are going to manage this particular existing business. Then, you are, you should talk about the responsibility of both the parties in this particular SA. And, you should clearly define that what are the responsibility you have relating to that. It might be relating to rate, it might relate to the capital, it might relate it to managing the market, it might relate it to managing the production, so much, so forth

Then, you know, set out the provision for straightforward sharing of know-how and technical development. And, this is very very important as I was telling most of the cases people give the knowhow. But that particular knowhow is not a clear sharing because there is a many thing, which is been hidden and which is not been transferred to the partner or to the, you know, strategic alliance. So, you should be clear on those particular thing that you know how much know how has been transferred and what are the things has been really translated through this particular, you know, strategic alliance.

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Then, you should talk about the duration of the alliance. and, if you wanted to mutually renew this particular alliance, how you are going to do, what is the process by which you should do this particular alliance. And then, you know there should be affiliation. I mean, in case of the strategic alliance there is in generally we do not create any separate

business entity. And, if you are not creating a separate business entity, and then in that case there might be some kind of a regulatory compliance, which you required to address like, you know who is going to tax, give a tax or how you are going to share the tax burden, which is coming out of this particular strategic alliance.

Or you can also need to spell out that if the, you know, liability is arises out of the third party action, then in that case how you are going to share that particular liability. Or, you going to share that particular liability jointly or severally or only one of you is going to share this particular liability. So, all these particular issues need to be spell out very clearly into your agreement and in contractual aspect. So, what I suggest that in case of strategic alliance, you should enter into a number of agreement one, I mean, I can name few of them like, it can be a shareholder's agreement; it can be, you know, non-disclosure agreement; it can be reward sharing agreement; it can be risk sharing agreement, so much, so forth. So, or you might have a single umbrella agreement within which you are going to enter, you are going to record every aspect within this.

Thank you.