

Relational Contracting and Principles underpinning Partnering Practices

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What & Why? - of my own focus today

Principles, Practices & Value

Generally:

- Sound Principles → Good Practices → Good Value

..... But if targeting Better Value or Best Value

- **Best** Principles & Practices
→ Higher Productivity & Sustainability → **Best** Value

Specifically, in our typical industry scenarios:

- **Relational** Principles & **Best** Practices
→ Integrated and Sustainable teams
with Common Objectives / Value Focus
→ **Best** Value

How? - of my coverage today

OUTLINE

- ***Why 'Relational' Contracts?***
 - Principles & basis of Relational Contracting
 - Examples from Risk Management
- ***Principles & Practices*** – iterative improvements
- ***Practices, pitfalls and potential*** in Partnering and Partnering-type collaborative approaches
 - e.g. in Alliancing, Frameworks, IPD, RIVANS
 - (a) **Globally**, (b) in **HK**
- ***Ways Forward***

CONTRACTS and RELATIONAL CONTRACTING (RC)

- **CONTRACTS** – essentially set out (a) who must do what, how, when ..
+ (b) their rights & obligations and risks + ...

But All can not be in 'Black & White' specially in our field - so our Contracts are 'incomplete'

e.g. Not all risks are foreseeable and quantifiable

+ some risks may be dealt with **better** by JOINT RISK MANAGEMENT (JRM)

RELATIONAL CONTRACTS >> what is in 'Black & White'

Sets outs Contractual basics as above + establishes:

- Framework for reasonable 'exchange' in the future and JRM
- Flexibility to jointly address uncertainties & complexities
- Relationships among parties that help in above e.g. in JRM, joint problem solving & disputes minimisation

Above also limits opportunism & enables innovations

Good Relationships also develop 'Relational' Obligations

e.g: (A) Western? - Handshake

(B) Asian? - 'written document is only a tangible acknowledgement of mutual obligations ... rather than a precise definition of'

Example: RC allows for GAIN / PAIN SHARE in TARGET COST Contracts

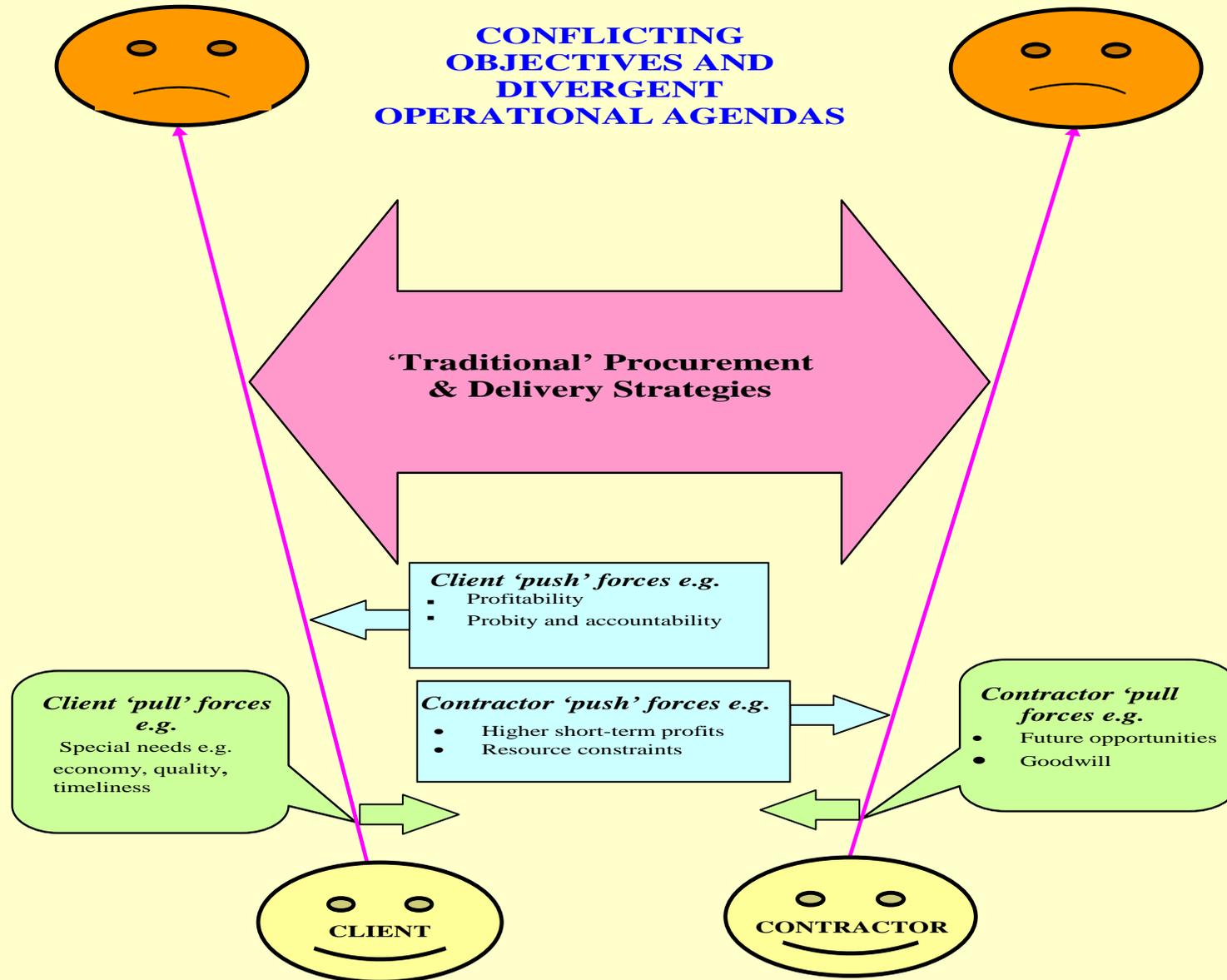
RELATIONAL CONTRACTING (RC) and Partnering

- Note: Some (e.g. in Australia) talk of 'Relationship Contracting'; others talk of '**Collaborative Contracting**' –all based on '**Relational**' principles:
- Risks / Problems are dealt with jointly by:
 - cooperation, restorational techniques, & adjustment processes
 - solves problems faster, better and maintains/ improves 'relationships'
 - virtuous cycle – improves relationships, morale and performance levels ...
 - Reduces waste of time and resources e.g. in multi-layered / duplicated checks
- RC thus enables:
 - **win-win-win** - by identifying & pursuing **common Value Objectives**
 - monetary + non-monetary **satisfaction**
 - shift from adversarial culture to **co-operation / collaboration**
- RC principles underpin co-operative working arrangements
 - in **Partnering, Alliancing** (common in Australia), **Framework Agreements** (common in UK), **Integrated Project Delivery** (being used in USA)
 - Can and Should extend thru. **whole Supply Chain**

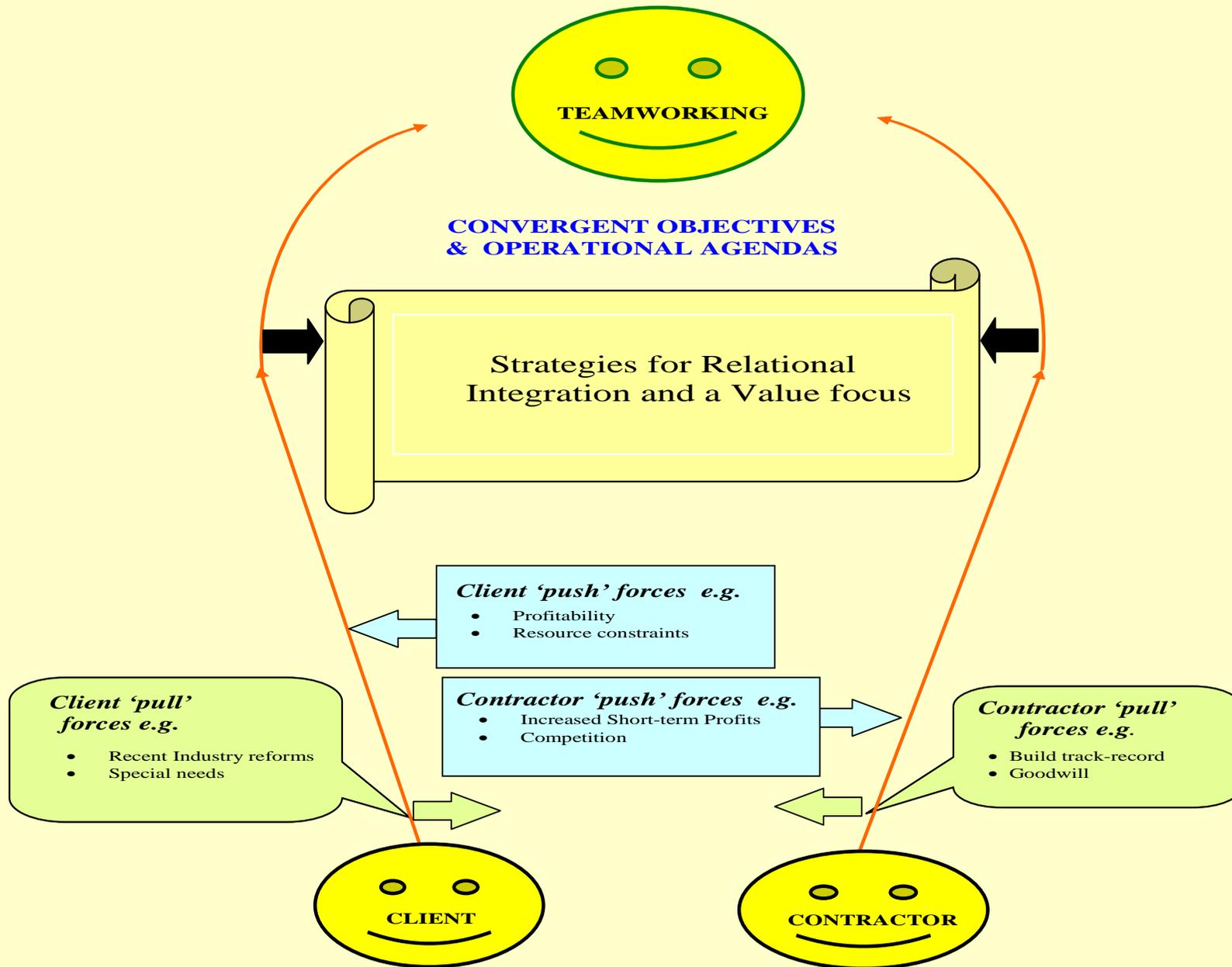
From RC THEORY to Principles and Practices:

General RC Theory: Macaulay (1963), Macneil (1974,1985), Williamson (1985), Coase (1988), e.g. differentiated between 'Classical', Neo-classical' and 'Relational' Contracting

Applying RC Principles to Construction Practices – since mid-late 1990's: e.g. **HKU**, Hong Kong; Lean Construction Group, USA;



Example of Force-field 'against' Relational Integration in a Client-Contractor relationship



Potential Force-field towards Relational Integration in a Client-Contractor relationship

Benefits of RC - Examples from Risk Management

Principles of Risk Allocation?

- Jesse Grove Report (1998) on Hong Kong GCC
 - set out 4 Standards of Risk Allocation
 - Default, Foreseeability, Management, Incentive
 - largely similar to those in **only Item 1** of foll.:
- ASCE (1979 Conference on Construction Risks & Liabilities sharing):
 1. Risks belong with those parties who are best able to **evaluate, control, bear the cost** and **benefit** from the assumption of those risks
 2. **Many Risks and Liabilities are best shared**
 3. Every risk has an associated and unavoidable cost which must be assumed somewhere in the process.
- **Item 3** is highlighted by *Michael Latham (1994)* in 'Constructing the Team':
'Risks can be transferred, accepted, managed, minimised or shared, but can not be ignored'.

Can **JRM** (Joint Risk Management') address **Item 2 (sharing)**:
- effectively and efficiently **through RC?**

Benefits of RC - Examples from Risk Management

Why SHARE Risks?

- Not all risks are foreseeable or quantifiable – uncertainty, complexity
 - nature and extent of risks may change, new risks may emerge, existing risks may change in importance
 - some risks merit joint efforts of all contracting parties for more efficient management
- Target of risk management should be
 - to minimize the total cost of risks
- not the cost to each party separately
- Unforeseen risks need to be managed through JRM
 - as and when they eventualize
 - under flexible contracts - RC
 - using best available options
 - team efforts - if needed
 - to benefit the project and all parties 'overall' ('net benefit')

Survey on: **Risk Allocation** – in HK in 2000

- **Two questions: re. perceptions on 41 risk items**
 - present risk allocation (owner & contractor)
 - preferred allocation (owner, contractor, JRM)
- 47 responses – cross-section of industry
- Details published
- Relevant Summary Points:
- **Total sample**
 - All 41 identified risk items - recommended for JRM
 - 29 risk items recommended for 11-50% JRM
- **Contractors:** 28 risk items need 11-60% JRM
- **Owners/ Clients:**
 - 26 risk items need JRM of more than 10%
 - 2 risk items need JRM of more than 50%
 - Generally more positive than Consultants

Survey on: **Implementing RC and JRM** – from HK in 2001

- 92 Respondents from 17 countries
- Details published.
- Relevant Summary Points on **Management of Special Risks** (only):

JRM is the best option

- irrespective of nature of unforeseen risks
- risk management requires serious attention

Contingency & contractual adjustment

- acceptable way to manage unforeseen risks

Opportunism is not a healthy option

Suggestions for facilitating JRM:

- Clear and equitable initial risk allocation
- Fair and practical adjustment mechanisms
- Teamwork based risk-reward strategy (e.g. Target Cost ...).
- SOME RELEVANT EXTRACTS FOLLOW:

Perceptions on 'Management of Unforeseen risks'

Dealing with unforeseeable & unquantifiable risks	
Options	Score (from 10)
Provide contingency in contract and assign to the contractor when they materialize	5.71
Provide contingency in contract and assign to the party ' best able to handle ', when they occur	7.79
Risk sharing or JRM, if needed	8.43

Perceptions on 'Management of Complex risks'

Dealing with foreseeable & quantifiable risks - perceived to be better handled with joint efforts	
Options	Score (from 10)
No need to take any burden; assign it to the other party(ies) by contract	3.45
If given opportunity – assume the risk, reluctance of other party could help to profit more (i.e. opportunism)	4.60
Risk sharing or JRM, as needed	8.69

Note: - similar pattern (JRM most favoured) from question on
'Management of Changing risks'

Foregoing Surveys & related initial findings Built upon by further Research and Development (R&D) - **Examples from HKU:**

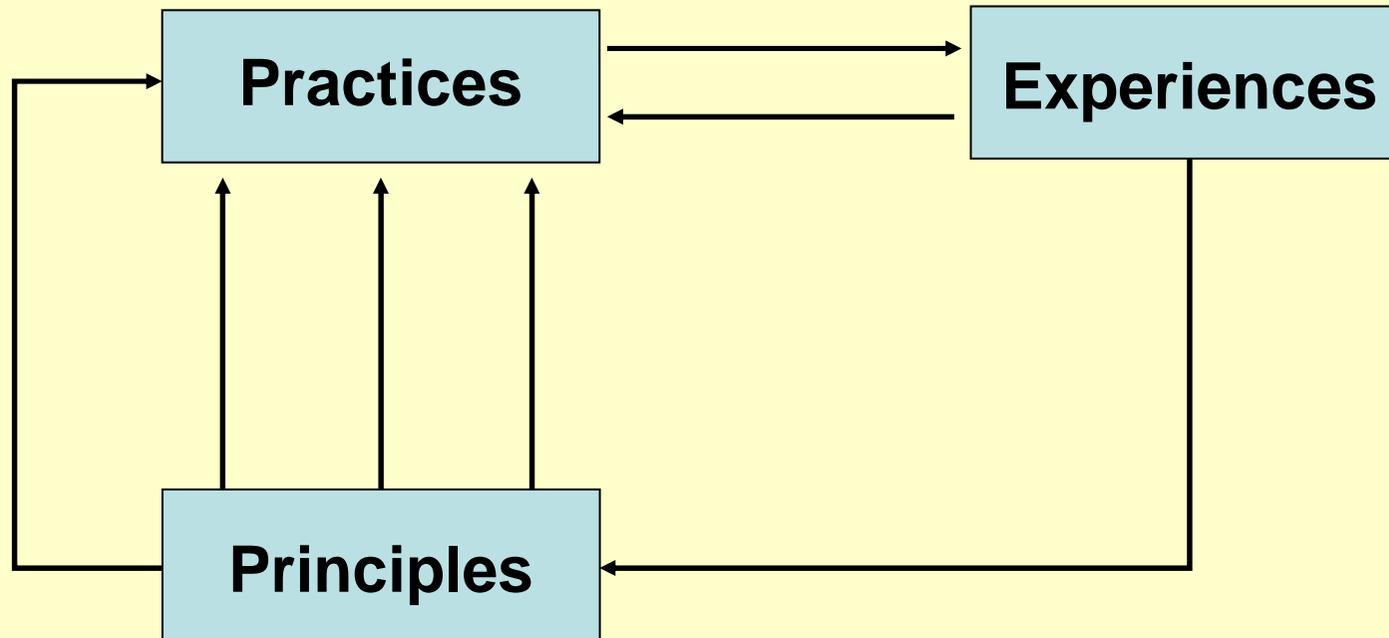
- Another **Survey** from HKU in 2004 - across Hong Kong + 4 countries (Australia, Netherlands, Singapore and UK) on: **Factors Facilitating/ Impeding RC** and **Factors Facilitating/ Impeding Integrated Project Teams**
- Many interesting findings & developments, e.g.:
 - indicate clear trend towards Relational practices and Integration ... and RC?
 - benefits recognised, but inertia + apprehensions retard uptake
 - **Culture change** is critical
 - **Caveats** - must guard against **misunderstanding of intent**, and/or **deliberate abuse** e.g. in team selection, collusion, ...
 - So need **revised protocols** (in contracts, codes, guidelines ...) and **practices**

Examples:

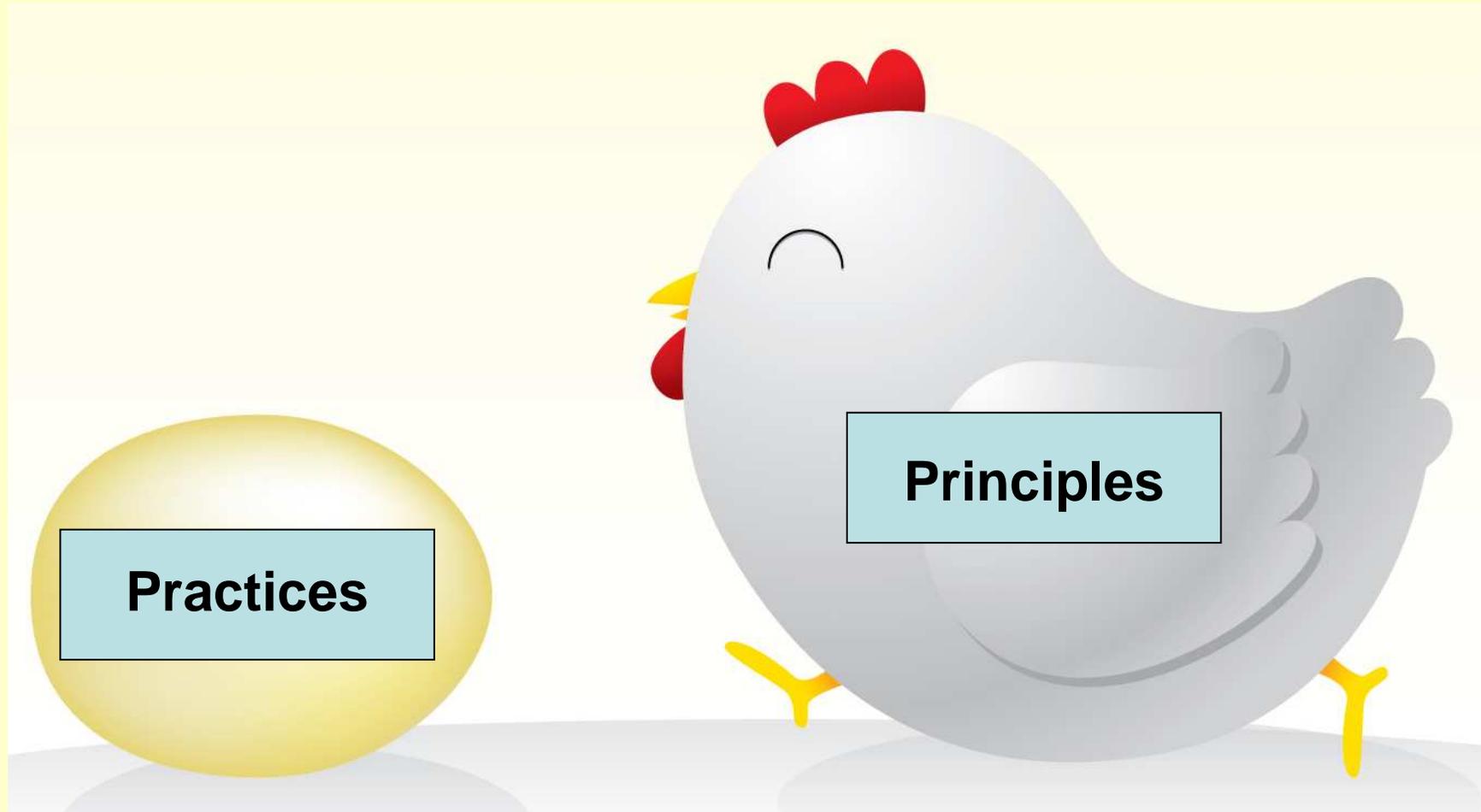
- (1) Many Case Studies on key/ critical aspects e.g. on '**weak links in partnering**'; on building a '**Partnering Knowledge Base**', ...
- (2) HKU CICID set up a Study Group in 2007 with overseas and industry partners for R&D into '**Legal Aspects of Relational Contracting**' (LARC)
 - in areas of contractual rights, remedies & other legal ramifications of Partnering, Alliancing & other forms of Relational Contracting http://www.civil.hku.hk/cicid/7_people/group_LARC.pdf

Principles and Practices

– where do they come from?



Which comes first ? Principles or Practices?



Snapshots from **Practice** - **Growth of Partnering** (in Construction Industries)

GLOBALLY

- Emerged as 'Project Partnering' in some **US** Army Corps of Engineers projects from late 1980's (but traced to other origins ... by other names e.g. in Japan **Asia**)
- Some **definitions** e.g. from Reading Construction Forum, **UK**
- Some **core principles** – co-operation, **trust, mutual objectives, fair dealing, good faith, commitment to project** – set out in 'relationship guidelines' + important aspect – **intent for risk-sharing** (Doug Jones, 2002)
- **7 pillars** – **Strategy, Membership, Equity, Integration, Benchmarks, Processes, Feedback**
- First differentiated 'Project' from longer term 'Strategic' Partnering; overlapped with mapping of 1st, 2nd (and 3rd) '**Generations**' of Partnering - towards more integration
- Non-contractual  'Bolt-on' Clauses or Umbrella agreements JCT FA
 Contractual Partnering
e.g. NEC, PPC 2000 (multi-party 'Project Partnering Contract' – Assn. of Consulting Architects), JCT 'Be Collaborative Contract' (BCC), ConsensusDOCS (USA)

Snapshots from **Practice - Growth of Partnering**
- in **HONG KONG**

Hospital Authority (1994),
MTRC, Private Developers, Works Projects ...

ETWB Practice Note on Non-Contractual Partnering
(revised June 2006)

CIC Guidelines on Partnering (Aug. 2010)

NEC Trials in Govt. Projects

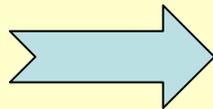
(Note: NEC has been used before in HK, e.g. by
Jockey Club)

Non-
Contractual
Partnering:

**Partnering
Charters**

in Hong Kong:

from 1994



Developments in/ from 'Partnering' – ***Beyond Partnering?***

IN CONSTRUCTION INDUSTRIES

- **Alliancing** – started in Oil & Gas Industry – now very popular in Australian construction industry
- **Frameworks** (framework agreements) - increasing in UK e.g. British Airport Authority, Highways Agency, Water/ Waste sector
- **Integrated Project Delivery** – initiated by AIA (American Institute of Architects) and promoted by Lean Construction groups in USA

IN GENERAL

BS 110000:-1:2010 on '**Collaborative Business Relationships**'

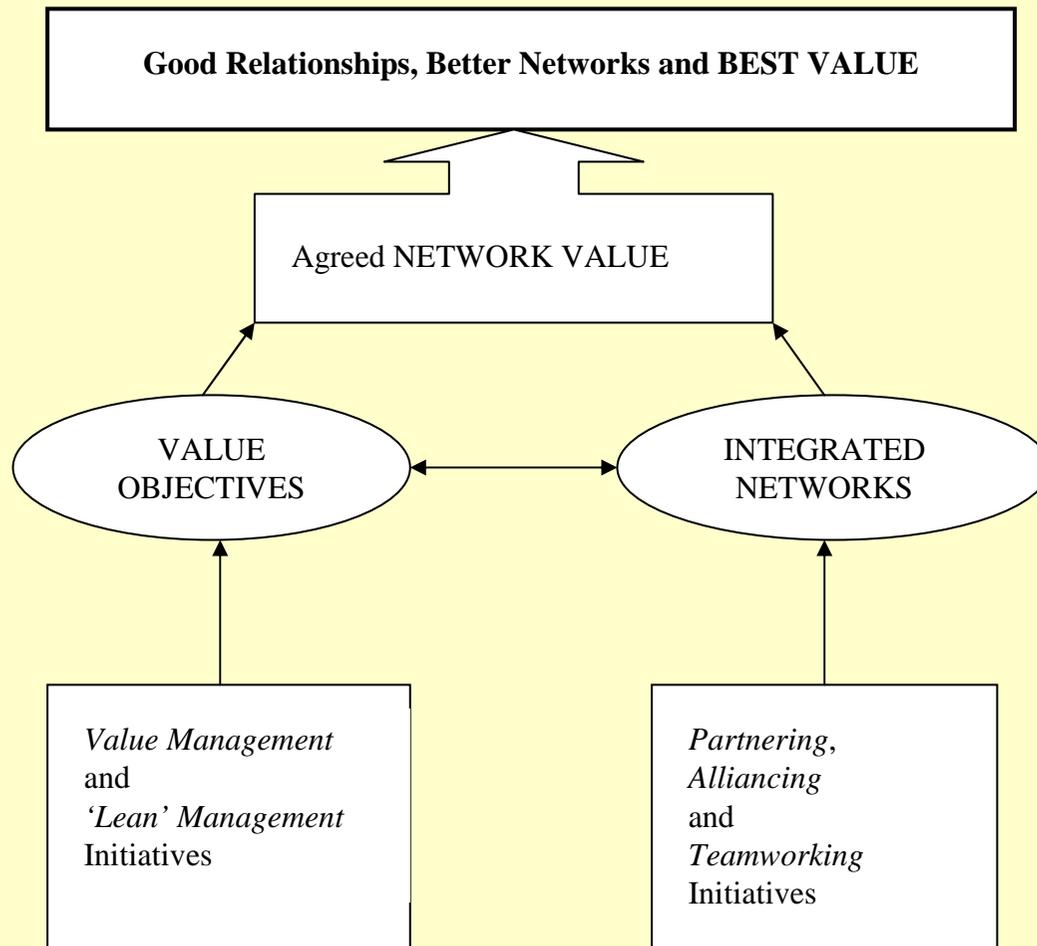
e.g. Part 1: A Framework Specification – to provide a strategic framework
...collaborative relationships ... enhanced benefits to all stakeholders

+ Provides detailed Guidelines & checklists etc on
Relationship Management - of multi-dimensional relationships;
Joint Risk Management
etc.

NEC and Partnering

- ICE Council decided (Sep. 1985) ‘to lead a fundamental review of alternative contract strategies for civil engineering design and construction with the objective of identifying the needs for good practice’
- NEC is designed to stimulate **good management of relationship** between the two parties to the contract and, hence, of the work included in the contract; be simple to understand and use ... in different situations,
- Provides for ‘contractual partnering’ with specific Partnering options, modalities and opportunities e.g. with ‘target costs’
- Also, in general: Core Clause 10.1 – “The Employer, the Contractor, the Project Manager and the Supervisor shall act as stated in this contract and in a spirit of **mutual trust and co-operation**”

RIVANS – Relationally Integrated Value Networks



Basic Thrusts in RIVANS concepts

Why RIVANS? – more than Super-charged Supply Chains?

Relational Integration through joint **focus** on identified common (network) *Value* elements.

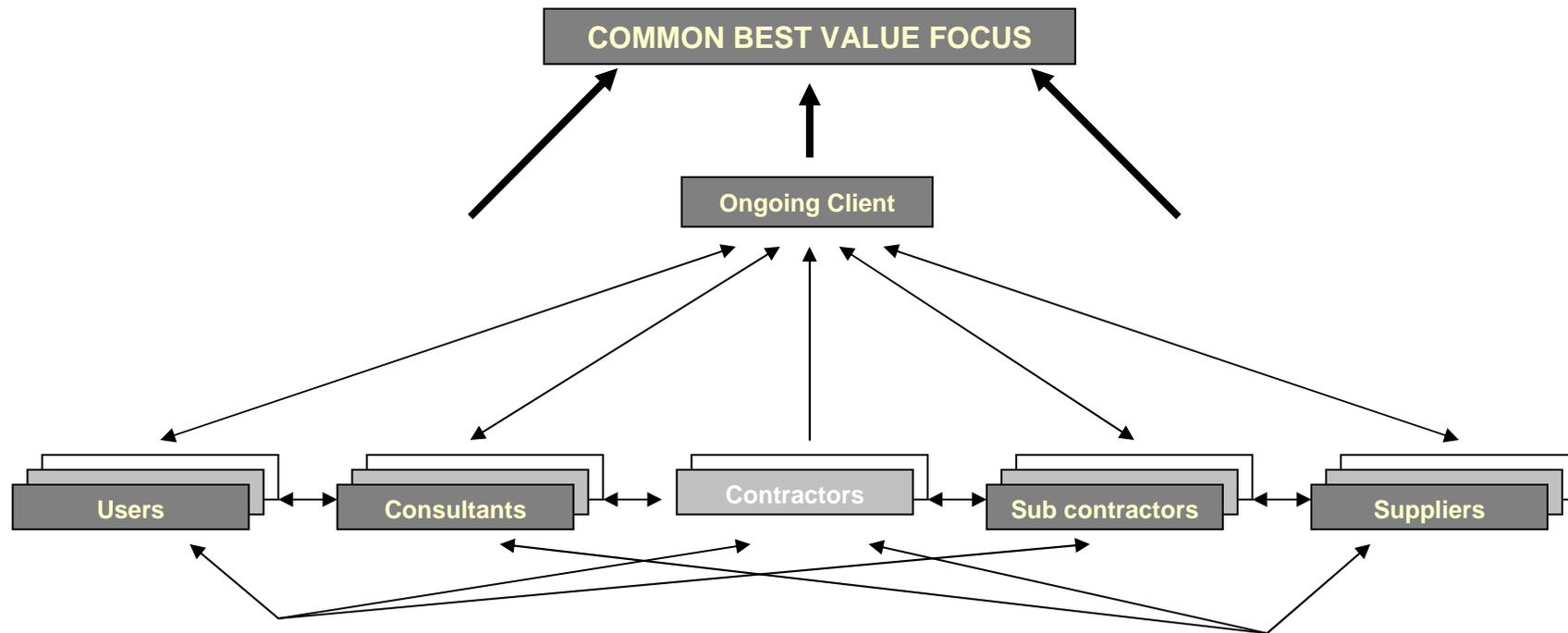
Concepts developed in HK - from both principles & practices

Related studies now in progress (a) in S'pore, HK, Beijing & Australia – focusing on potential for 'RC frameworks' and 'Relational Practices' in **public sector projects**

(b) In HK on RIVANS for **TAM** (Total Asset Management) i.e. also linking to O&M supply chain/ value network

RIVANS – Relationally Integrated Value Networks

- *VISUALISATION*



Conceptualising a 'large' (ongoing) Client's RIVAN

Extending RIVANS to Total Asset Management (TAM)

RIVANS for TAM – ongoing - initial findings from Questionnaire

Note: Case Study and Interviews are ongoing in HK with parallel ongoing studies in Singapore and the UK

- Main aims: a) identify **synergies and added value** through collaboration between those engaged in **Infrastructure Project Management (IPM)** and **Infrastructure Asset Management (IAM)**; and (b) develop **concepts and working arrangements** for RIVANS for TAM

Examples from first 99 responses: **Highest level of agreement on:**

– **Better value/synergies arise from:**

- 1) sharing relevant information, (4.4 /5);
- 2) life-cycle optimization (4.4 /5);
- 3) addressing sustainability issues together(4.2 /5)

– **Most important common goals in achieving better value:**

- 1) Common project goals – e.g. cost, quality, time, safety (4.6 /5);
- 2) effective and efficient information sharing (4.4 /5);
- 3) efficient resource utilization & management (4.2 /5)

– **Clients are most important stakeholders for deriving better value**

Potential PITFALLS in PARTNERING?

Won't Partners get too 'close' & 'comfortable' at times / after some time
and then less efficient?

Aim for CO-OPERATION + COMPETITION = CO-OPERATION ?

- co-operate to be more competitive together,
hence compete better 'against' other networks
- create a bigger pie, and divide it equitably

e.g. A politician from one superpower (2007):

“guiding principles of relations (with another superpower she was visiting) are:
“pragmatism and mutual interest”

– can be same for partners in partnered contracts/ alliances/ frameworks/ RIVANS?

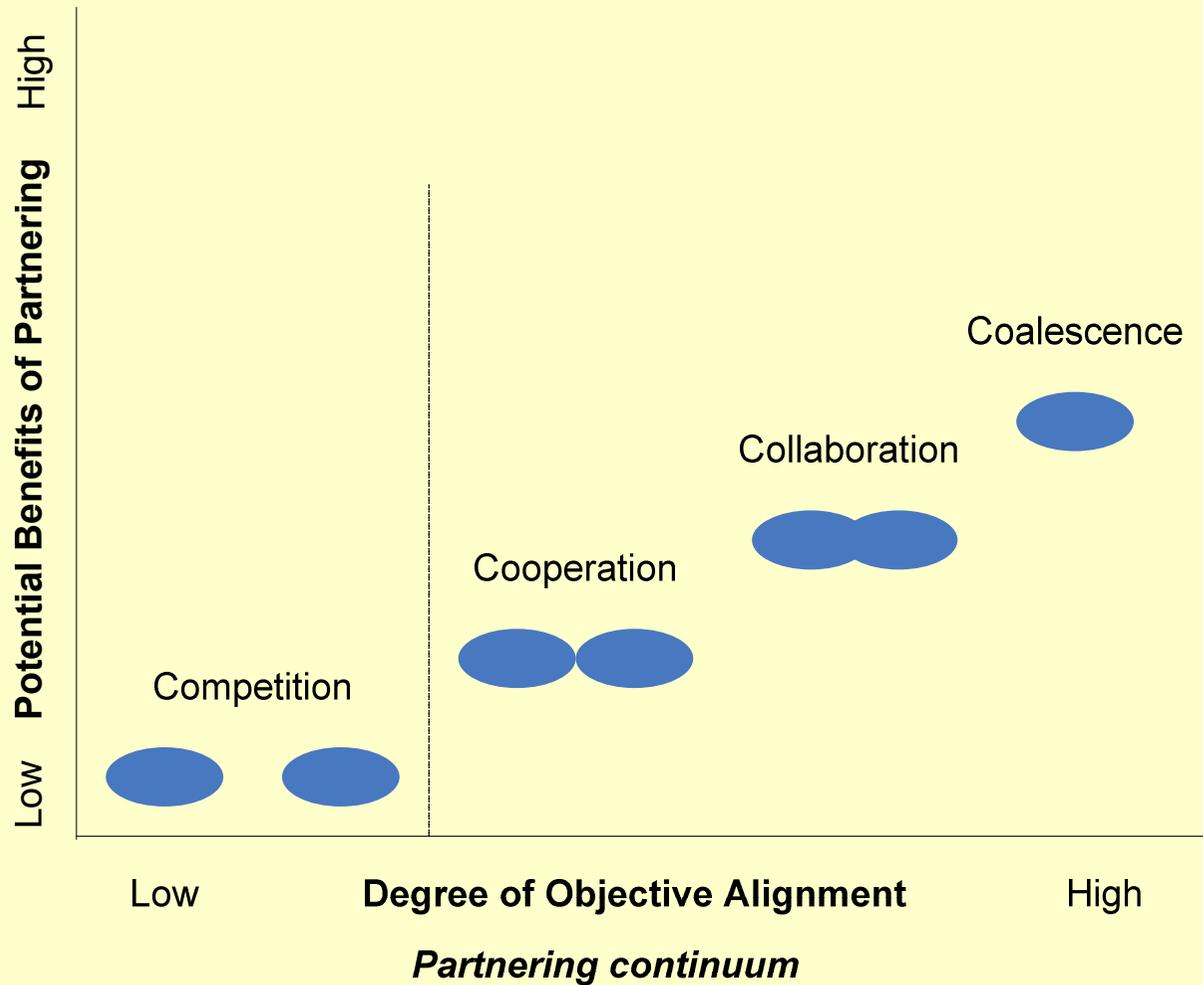
e.g. smoothen transactions, reduce waste & duplications e.g. in supervisory layers ...

‘Collective Action’ rather than ‘A collection of actions’ – another super-politician (2009)!

But beware (a) empty promises and mere nice words ‘partner-speak’,
(b) complacency, (c) abuse, e.g. in collusion, (d) loss of efficiencies

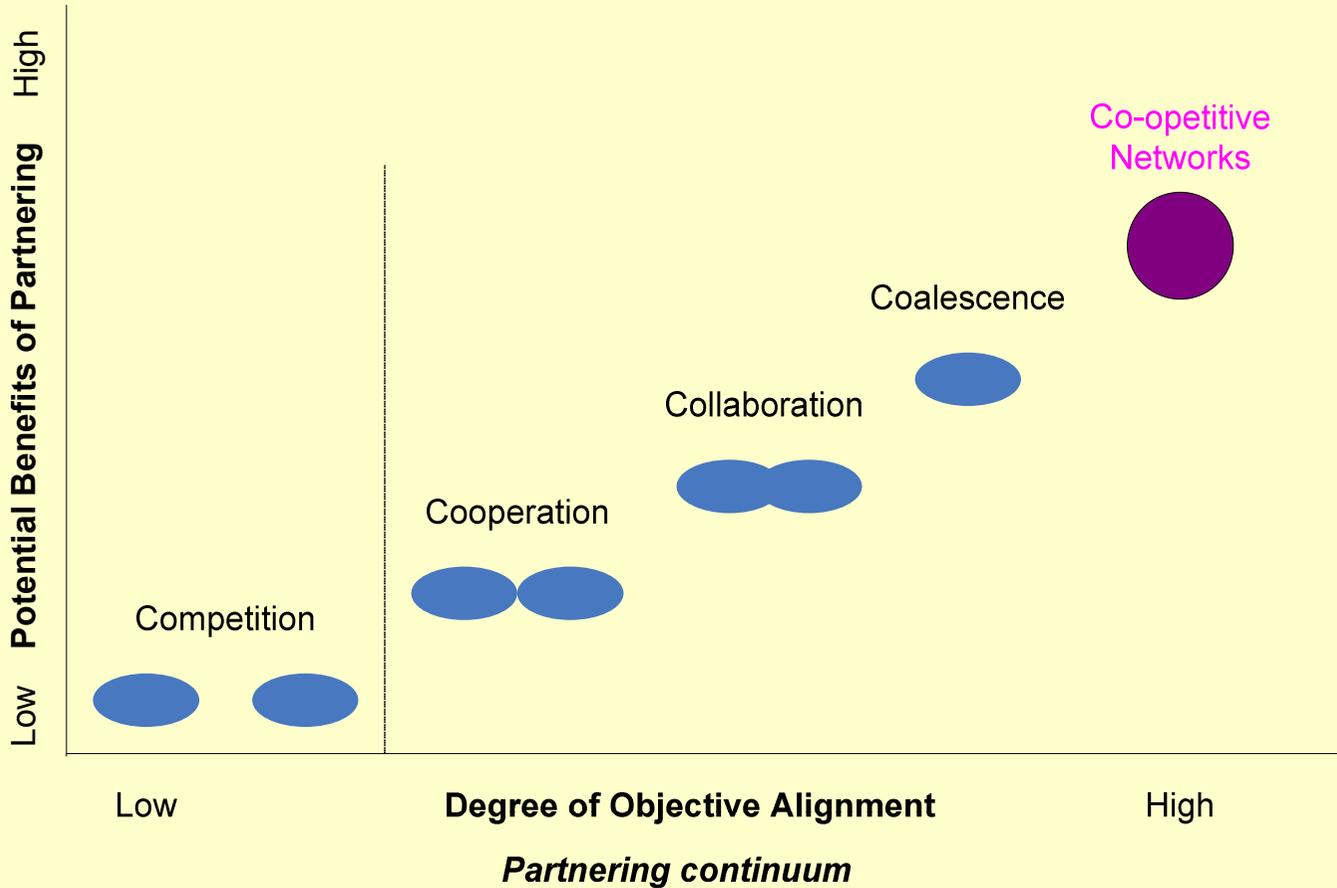
Culture change and long term commitments imperative - for meaningful Partnering

Visualising Progression in Partnering



Source: Thompson and Sanders (1998), Partnering Continuum, ASCE, Journal of Management in Engineering 14(5), 73-78

Extending Progression in Partnering



Source of base diagram: Thompson and Sanders (1998), Partnering Continuum, ASCE, Journal of Management in Engineering 14(5), 73-78

Next Steps? – Co-opetitive Networks? e.g. RIVANS RIVANS for TAM?