

qLegal

The small print for BIG IDEAS

Disclaimer: This publication describes the law in general terms. It is not intended to provide legal advice on specific situations and should not be relied upon as a source of legal advice.

Date produced: 9th July, 2021

Tips for Negotiation

This online publication explains the scenarios in which you will be negotiating as an entrepreneur and some tips you can consider to develop your skills as a negotiator.

“Everyone negotiates something every day”

As Roger Fischer and William Patton stated, negotiation is a fact of life, therefore you will always be engaged in discussions, debates, and agreements or disagreements involving negotiation dynamics. And being an entrepreneur demands a high skill in negotiation, not only with third parties but also through the day-to-day conduct of your business. For instance, you may try to agree with a potential employee by negotiating a vesting agreement or even the salary and the employment conditions, or bargain with another potential co-founder of the company you are trying to incorporate.

Common terms and concepts related to negotiations

When you are negotiating, there are common terms and concepts you should know to avoid missing relevant facts during the meetings held with other parties. Here are the most relevant ones:

BATNA - Best Alternative To a Negotiated Agreement refers to the other options available to a party if it fails to negotiate or fails to reach an agreement after a negotiation. It is important to identify your own BATNA and also to think about what the other party's BATNA might be. Improving your BATNA is a great way to improve your position and leverage in a negotiation; sometimes you can improve your BATNA in between different rounds of the same negotiation. You might decide to tell the other party what your BATNA is so that they are aware that you could walk away from the negotiation and go with your BATNA if they don't negotiate fairly or well. To develop your BATNA, you should (i) list all the alternatives to the current negotiation; this means what could you do if the negotiation is unsuccessful, (ii) evaluate how much each alternative is worth to you, and (iii) select and identify both the highest and lowest-value alternative. With those elements determined, you would have more

qLegal

The small print for BIG IDEAS

bargaining power over the other party, or at least, you would be able to participate in a more convenient way.

Common ground implies the issues or positions on which the parties agree.

Concession strategy means the points you would be willing to trade during a negotiation with the other party. Before entering into a negotiation, it is important to consider the set of positions you are willing to give up. This is also known as the 'Trading Plan'.

Interest-based negotiation is a type of negotiation where the parties identify and focus on the underlying desires and reasons behind their positions, and recognise that those desires and reasons could be satisfied through numerous possible positions. Some negotiators start by explaining their interests to the other side and asking the other side to explain their interests. In this way, they can set the tone that it will be an interest-based negotiation.

Negotiation jujitsu implies a strategy of negotiation used to avoid entering into positional bargaining dynamics. Its main aim is to refuse the adoption of a 'defensive' reaction against a party that is positional. In other words, you avoid presenting counterattacks and rejecting the other party's position and remain focused on exploring the other party's interests and proposing imaginative solutions useful for both parties.

Positional bargaining refers to the point(s) you will defend or argue during a negotiation, in contrast to the interests or rationales behind those points. Overall, a party that engages in positional bargaining tends to lock into its position and become more committed to it, thus running the risk of failing to reach an agreement that embraces both parties' interests.

ZOPA stands for 'Zone of Possible Agreement' between the parties. The ZOPA could be wide (where there is a better possibility to find a solution) or narrow (where it is harder to find a solution between the parties).

Advantages and disadvantages of different styles of negotiation

There are several styles of negotiation on which negotiators rely. People often ask which one is the best or right approach. In reality there is no easy answer. All the styles have some benefits and some drawbacks. The following styles are adopted from the Thomas-Kilmann conflict styles to help negotiators to have variable approaches in different scenarios.

Competing: Competitive style negotiators pursue their own needs and own concerns, perhaps even to the detriment of the overall negotiation. This conflict resolution style is most

qLegal

The small print for BIG IDEAS

similar to positional bargaining since the parties tend to depend, exclusively, on their position without considering either the potential common ground or both parties' interests, thereby reducing the ZOPA. This style is assertive, self-confident, and focused on the deal and the results. Competitive negotiators are sometimes so narrowly focused on their shorter-term gains that they plunder obviously through negotiations like a pirate. This style is beneficial when you need to act or get results quickly. It is critical when a situation is not favourable for negotiation and immediate compliance is required. However, often due to the narrower approach, competing negotiators may not take time to prepare and may neglect to consider the interests of the other party, which might not facilitate a win-win situation. It often leads to a deadlock situation. Moreover, it could sometimes leave business relationships in burning tatters.

Accommodating: The accommodating style of negotiation is the opposite of the competing style. This style requires a good relationship with the other party. Accommodating negotiators think that the route to winning people over is to give them what they want. They tend to smooth over tensions, minimize differences and are most concerned with maintaining a good rapport and satisfying the needs of the other party. Undoubtedly, it ultimately allows the parties to resolve the conflicts. However, on the downside, it is not a particularly effective style against competitive style negotiators.

Avoiding: This is most often referred to as a "passive aggressive" style. Negotiators who exhibit this style are generally less assertive and more apprehensive. It is quite evident from the name itself that people who prefer this style do not want to step into or create tension. This style is usually advantageous when the matters in dispute are trivial in nature. The most important advantage of this style is that it helps the smooth operations of short term projects by simply avoiding conflicts, but this can work to the detriment of longer projects.

Compromising: This style of negotiation is like haggling. It often involves splitting the difference, exchanging concessions and seeking a quick middle-ground solution, which tends to end in moderate satisfaction of both parties' needs. The compromising negotiator is intermediate in assertiveness and cooperativeness and more focused on efficiently creating an acceptable agreement while maintaining a relationship with the other party. The positive outcome of this style is that both parties win something which leads to resolving the conflict; however, there are certain negative outcomes with this style, as one could end up not getting the essential things desired from the negotiation. Furthermore, if you make concessions on your position with no strong rationale or without seeking something equivalent in return, the other party may assume that you are willing to compromise on other disputed points and try to exploit this to their advantage.

qLegal

The small print for BIG IDEAS

Collaborating: This style is often honest and communicative. Generally, it is known as a win/win situation. Collaborating negotiators usually evolve through the other profiles, and they grow into a collaborative negotiation style. This means collaborating negotiators can easily revert to one or two of the other styles when pushed or when the situation calls for it. The collaborating style is high in assertiveness and in cooperativeness, promoting both the relationship and the substance of the agreement. This style of negotiation typically produces an interest-based negotiation since the collaborating negotiator considers both its own position as well as the desires and interests underlying the other party's position. In other words, this type of negotiator looks beyond their own individual position and seeks to find common ground between the parties. Therefore, this style is more suited for parties who tend to value taking the time to create optimal long-term outcomes over quick, efficient negotiations that might leave value on the table. The collaborating style of negotiation has much practical benefit as it makes all parties involved feel valued and understood. Moreover, it can foster understanding, empathy and mutual respect. Another advantage is that it may set the tone for future conflict resolutions. Though there are not many disadvantages, the collaborative style of negotiation is not well suited for competitive style negotiators. There may be situations where solutions will not be won for all parties involved in the negotiations. Moreover, it takes more time.

Each of these styles of negotiation has advantages and disadvantages as mentioned above. One style may be more useful in certain situations than in others: the choice of appropriate style will typically depend on the situation. In order to be the most effective negotiator, one must recognize one's own tendency or style preference, assess as best as possible your counterparty's style and adjust your approach to fit the specific situation.

Practical tips for negotiation

In this growing industry, we are surrounded by negotiations at every step. Entrepreneurs and start-ups are often exposed to situations where they might have to strike a balance, reach an amicable solution with investors or even handle the differences between parties. It is a process of getting what you want from others. Below are some practical tips for entrepreneurs, small business owners and start-ups to prepare for negotiations for 'getting to yes':

Prioritize interests over positions. Often arguing over positions leads to unwise compromises or locked positions with no amicable settlement. Being resolute about a position may result in a time-consuming process of bargaining with no positive outcomes. Rather, while

qLegal

The small print for BIG IDEAS

negotiating, the focus should be on the underlying interests of the parties that define the problem. For example, two brothers are arguing over the ownership of a house and do not desire to split the ownership rights. Their positions may seem unresolvable, however the underlying interest behind this position is that one brother wants it as an investment to rent and the other one just needs a place to stay. By asking the question of “why” for their positions, the brothers can strike a balance and handle the differences. One brother can have the ownership rights of the house and rent it to the brother who needs a place to stay.

The goal of a negotiation is to serve the interests of the parties and hence interests should be prioritized over positions. By exploring the interests behind their positions, both parties may have a mutual gain, which also increases the chances of the agreement being honoured by both parties.

Documenting the negotiation and the agreement. There are at least three ways that documentation is important during a negotiation: presenting your interests, taking minutes and recording the final agreement. Presenting written statements along with verbal arguments tends to make your argument stronger and provides more clarity. Recording the minutes of the meetings held between the parties and taking good notes is essential for any future disagreements over what has been agreed to at each meeting. The minutes also assist in formation of a written document capturing any specific agreement of the parties. It is advised to take the initiative to offer the first draft of the written agreement since it lets you formulate the structure of the agreement and the other party may be reluctant to make extensive changes to it.

Attentive listening. Understanding clearly what the other party wants is one of the most important factors of negotiating. When one effectively listens and perceives, a better understanding of the deal can be attained. Let the other person do the talking, gather and evaluate their intentions and create a competitive advantage for yourself by using this information to approach a solution where everyone wins.

Strategic analysis of all possible solutions and alternatives. There is always more than one approach towards a problem, and being innovative and analytical while processing these solutions may cultivate something new which might be beneficial to both parties. Imagine all possible outcomes, visualize and evaluate the consequences, and brainstorm all drawbacks. Be prepared with this research ahead of time to make a certain decision to ensure mutual gain. If the alternative is to walk away, evaluate the opportunity cost of doing so and make an informed decision.

qLegal

The small print for BIG IDEAS

Focus on the problem, not the people. It is always crucial to remember that the focus should be on the problem at hand, and not the representatives behind it. Sometimes, the ability to let go of the differences in opinion and to put yourself in the other party's shoes may present an outcome in which everyone wins. Equal participation, clear communication and genuine intention towards mutual gain can overcome the differences between the parties and allow the focus to remain on the issues.

Planning. Being one step ahead is always beneficial in the process of negotiations. Conducting research about the other side's business and interests and being informed about what they have to offer gives you an advantage in striking a deal. At the same time, it is equally important to think about your own interests, options and BATNA before the negotiation. Prior preparations will help to avoid surprises while negotiating. Even 30 minutes of preparation will go a long way. Here is a link to a negotiation preparation worksheet that you can use to prepare for an interest-based negotiation:
https://drive.google.com/file/d/1FOvRbKUkgXhH9mcQwOZ-8fPMts442X_0/view?usp=sharing

Being confident and taking initiative. Making the first offer may create stronger influence in the negotiation process since it sets the basis of the further bargain. Going first also gives you the opportunity to set the tone for the negotiation: you can start by stating your interests rather than your positions. The more prepared you are, the more confident you are likely to be. Practicing and rehearsing how you are going to open the negotiation is time well spent. It is also good to be confident about what you have to offer and not to compromise too quickly. The other party may swing the deal just based on your confidence.

In today's business environment, start-ups, entrepreneurs and small business owners must have strong negotiation skills. Remember it is a matter of practice, but you also need to understand the different theories of negotiation in order to practice properly and in an accurate manner. Yielding dividends, and even the survival of your company, will depend on your mastery of negotiation techniques.

Nevertheless, if you find yourself or the company you work for in a situation where the negotiation you are leading fails or negotiating doesn't seem to be an advantageous option, consider the range of possibilities and alternative mechanisms you may use to resolve your disputes before approaching courts, such as conciliation and mediation. For a helpful additional resource explaining and comparing alternative dispute resolution mechanisms, please review this qLegal online publication: *Alternative Dispute Resolution*.

qLegal

The small print for BIG IDEAS

Helpful Resources

Roger Fisher and William Ury, "Getting to Yes" (3rd edn, Penguin Books 2011)

William Ury, "Getting past no: Negotiating with difficult people" (6 edn, Bantam Books 1991)

This online publication was drafted by LLM students participating in qLegal, the pro bono commercial law clinic at the Centre for Commercial Law Studies, Queen Mary University of London: Ana María Sánchez Silva, Urvi Gulechha, and Waqar Hussain.

qLegal provides free legal advice and resources to start-ups and entrepreneurs on intellectual property, data protection, corporate and commercial law. See <http://www.qlegal.qmul.ac.uk/>

Copyright © 2021 qLegal