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**International Energy Disputes  
Negotiation Strategy**

# GOALS OF MEDIATION

- To find a business solution rather than focusing on trial arguments about which party is right or wrong
- Consider a range of settlement options in advance and think about the point of view of the other side and what their needs might be
- Work with the mediator to create an atmosphere where the parties can discuss potential resolutions and, eventually, settle on an acceptable solution

# FUNDAMENTAL PRINCIPLES

## INFORMATION IS POWER:

- Obtain as much relevant information
- As early as possible

# FUNDAMENTAL PRINCIPLES

Types of information to gather  
when faced with a dispute:

- Substantial facts
- Motivational facts

# FUNDAMENTAL PRINCIPLES

## Substantive facts:

- Contained in the documents and material related to the dispute
- Includes the who, what, when and where of the dispute

# FUNDAMENTAL PRINCIPLES

## Motivational facts:

- The objectives and interests of all the parties and their representatives
- Includes the motives, fears, concerns and interests of the parties to the negotiations

# FUNDAMENTAL PRINCIPLES

Once the information is gathered

The negotiator should:

- Develop a strategy
- Determine an objective

# FUNDAMENTAL PRINCIPLES

## TIMING:

- Negotiate when your leverage is high
- Leverage comes from superior knowledge
- This advantage can shift over time



# FUNDAMENTAL PRINCIPLES

## Who should be involved?

- In house counsel, outside litigator and key players within the client organization should get together at the outset, to gather documents and share stories
- Bring senior executives with authority to settle
- They should physically attend – mediation is a dynamic process

# THE STAGES OF THE NEGOTIATION PROCESS

There are three main negotiation stages:

1. The Assessment phase
2. The Persuasion phase
3. The Bargaining phase

# THE STAGES OF THE NEGOTIATION PROCESS

## 1. The Assessment phase

- Information gathering and planning phase
- Takes the longest amount of time: gathering information and delaying disclosure until one has gathered enough information to know which information is advantageous to disclose

# THE STAGES OF THE NEGOTIATION PROCESS

## 1. The Assessment phase (contd.)

- Quantify both side's interests

Interests include not only the amount a party might be willing to pay to settle, but also the parties' motivating factors that may encourage settlement (eg. An apology)

# THE STAGES OF THE NEGOTIATION PROCESS

## 2. The Persuasion phase

- Involves the strategic sharing of information to persuade the other side to settle and resolve the dispute
- In deciding how to persuade an opponent, it is important to understand what information to disclose / to avoid disclosing

# THE STAGES OF THE NEGOTIATION PROCESS

## 2. The Persuasion phase (contd.)

- Also important in the persuasion phase is to decide when it should occur
- Mediation usually involves both persuasion and bargaining, it is important to be prepared with a detailed argument with exhibits and convincing proof – enough to convince the other side that you are ready to try the case, if necessary

# THE STAGES OF THE NEGOTIATION PROCESS

## 3. The Bargaining phase

- This phase involves the actual exchange of offers in the negotiation process
- It is important, prior to entering the bargaining phase to decide on an offer and concession strategy and have a target goal range within which to settle as well as concession points along the way

# THE STAGES OF THE NEGOTIATION PROCESS

## 3. The Bargaining phase (contd.)

- It is also important to prepare the client thoroughly prior to the bargaining phase: if an attorney is going into mediation with a client, the client needs to be fully appraised of the strategy, so that he/she does not give away information through gesture, facial expressions or words that diminish leverage – body language and non verbal communication is to be checked



# THE TERMS

## The drafting and negotiation of terms

- Once the negotiation is over, this stage covers drafting and negotiating the terms of the agreement
- Documenting the settlement: a possibility is to make a list of deal points agreed upon and ask client representatives to sign this short form agreement – to start with
- Payment over time, confidentiality and obtaining a release for other matters are all possible terms to be incorporated in the agreement

# PROBLEM SOLVING NEGOTIATION

- Alternative to adversarial-type negotiations
- Focuses on addressing as many of each party's needs as possible, rather than focusing on a win-lose type negotiation
- The parties inventory their needs and wants, classify and compare them, and search for win-win solutions

# PROBLEM SOLVING NEGOTIATION

## Problem solving negotiation (contd.)

- The problem solvers are less concerned with the negotiation offer or bargaining strategy, and are more interested in an expansive attempt to find a negotiation outcome, that serves as many of each of the party's interests as possible

# PROBLEM SOLVING NEGOTIATION

## Problem solving negotiation (contd.)

- This is often a negotiation strategy that is used when the parties are interested in maintaining a relationship after the negotiation
- The presence of a respected third party is deemed to increase the impetus to agree

# CONCLUSION

- The effective advocate moves through the successive stages in the assessment, persuasion and bargaining phases only when prepared for the next stage
- Persuasion requires detailed strategic disclosure and a balanced argument. Bargaining should be planned with ultimate goals and concession points in mind
- Controlling the disclosure of information and the agenda leads to obtaining maximum leverage in the negotiation process and the best results

**THANK YOU**

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