Negotiations are not about wanting it all

The parties involved need to look beyond the immediate objective of sealing the deal. They need to approach the issue in a constructive manner for the good of their future relationship.

By Hardeep Plahe

The Rolling Stones once sang, You can't always get what you want. For dealmakers out there, particularly those negotiating joint ventures, this song contains a lot of wisdom.

We shouldn't be pushing for every point in a negotiation. You're unlikely to win all the arguments and there's a danger that the strategy results in no deal being made.

There is plenty of evidence to suggest that a negotiation strategy that focuses on the interests of the parties works better than one where a party puts forward a position to counter the other party's position — in the latter model only one position and party can "win" which means the other must "lose".

Even if it doesn't kill the deal, trying to win every point may leave a bitter taste in the mouth of your counterparty. This may be damaging to the relationship — particularly if you're negotiating the terms of an ongoing business relationship such as a shareholders' agreement that regulates a joint venture.

In a joint venture, the shareholders' agreement is the plan, the objective and the hopes for your "partnership" with your fellow shareholder. Unless you start with that outlook, the negotiation and the future relationship are doomed to fail.

Failure could mean an acrimonious split, difficulty in getting business decisions made, suspicion when suspicion is uncalled for and the constant reading of your partner's mind. These things can destroy the value of the joint venture.

If during negotiations you try and score "points", you've already lost. You might get the points you want but you leave impressions that weaken your relationship.

Such impressions are difficult to dislodge once they have been made. Therefore, one should approach a joint venture or any other business relationship as if it is a family relationship.

One needs to understand the background, history and objectives of each party before one can effectively negotiate. Let me tell you a fictional story of a joint venture between Mr. and Mrs. Smith and Exit Capital, a private equity firm.

Mr and Mrs Smith started a business selling food containers about 10 years ago. They only had enough savings to weather a couple of lean years. Mrs Smith was concerned that most of their retirement savings would be ploughed into the business and it would be difficult to make them back if the business failed.

Fast forward 10 years, the business is successful. It has a wonderful culture and the employees of the business are very loyal to the Smiths. However, the Smiths' retirement savings are tied up in the business.

The Smiths feel that this is the time to liberate their retirement fund by selling the business to Exit Capital.

Exit Capital's strategy is to streamline the business by reducing the number of employees and reconfiguring its capital structure by replacing equity with debt. Exit Capital values the business' culture and wants the Smiths involved in management and to keep a 10 per cent shareholding.

Exit Capital would like to sell the business within five years. If Exit Capital approaches the negotiation of the shareholders' agreement without considering the Smiths' retirement objectives and their emotional investment in the business, Exit Capital is likely to store up resentment and problems for the future (particularly as the Smiths will be involved in management).

The Smiths will want to ensure that Exit Capital's plans are sensitively implemented and that they can eventually sell their 10 per cent interest. Likewise, if the Smiths do not understand the objectives of Exit Capital (particularly the need to streamline the business, keep employees motivated, restrict the sale of the Smiths' 10 per cent stake and exit the business in five years) then they are unlikely to liberate their retirement fund as the deal may not happen at all.

Exit Capital might, for example, insist that the Smiths cannot sell their 10 per cent for five years or until Exit Capital sells. The Smiths may say that although they have no intention to sell quickly, they do not want to give up their flexibility.

So, how do the Rolling Stones help us here? They remind us that if you can't get what you want, you "get what you need". The key is to focus on the common interests of the parties rather than insisting on their individual positions or "wants".

As there will likely be very few buyers for the 10 per cent stake, the parties could agree that the Smiths cannot sell for two (as opposed to five) years and Exit Capital is given the chance to buy the stake before it can be offered to a third-party at the same (or higher) price and terms.

In this example, although each party doesn't get what it initially wants, it gets what it needs and, most importantly, approaches the issue in a constructive manner for the good of their future relationship.

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