

ENTERPRISE

Agreement isn't the end of the deal



Negotiation strategies

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Patrick Nelson had just started a new business and needed an investor. His father-in-law agreed to invest \$200,000 in exchange for a 10 percent share in the venture. He also demanded that Patrick appoints his son, Kevin, (Patrick's brother-in-law) to the position of vice president and that he makes him a minority shareholder. Patrick optimistically accepted these terms.

A few months later, Kevin relocated to another state to be closer to a new potentially large client. Communication between Patrick and Kevin became less frequent, and within a year their relationship started to deteriorate. They were in disagreement about the decision-making processes and about each one's authority within the company. To make matters worse, Patrick's wife (Kevin's sister) had filed for a divorce. Patrick eventually saw no option but to fire Kevin. This resulted in Kevin and his father suing Patrick for a cash settlement equal to their equity shares in the business and for wrongful termination. What started out as an ideal arrangement ended as a nightmare!

Many negotiators assume that once an acceptable agreement has been reached, the negotiations are complete. This might be true when the agreement does not need to be long-lasting or require an ongoing working relationship such as the haggling between a fishmonger and a housewife. Once a price has been agreed upon and the exchange made, the negotiation is unequivocally complete.

In more sophisticated business negotiations however, the agreement has a lifecycle during

which an ongoing working relationship is necessary. Reaching an acceptable agreement is only part of the negotiation. It is equally important to negotiate ways as to how that agreement will be managed, maintained and preserved for the entire duration of that agreement.

Here are some steps to follow when negotiating an effective management and maintenance plan for the agreement.

Ask the right questions

Although it is difficult to raise sensitive issues while still in the euphoria of having reached an agreement, it is nevertheless necessary in order for the agreement to be durable. A few uncomfortable moments now can prevent months of emotional distress, frustration and financial loss later.

As a first step, you should ask "worst case scenario" questions and "what ifs." These reality testing questions are likely to produce some very useful thinking and productive dialogue.

Patrick, Kevin and his father could have discussed questions such as "what if one partner wants out?" or "what measures can we take to make sure that family relationships and business relationships are not impacted by one another?" Other questions that could have been considered are "how will we make decisions?" or "what if we get embroiled in a dispute?" Another useful question to ask is "What is there that we could possibly imagine that might go wrong?"

It is also helpful to explore areas of potential misunderstandings and to consider circumstances that would trigger a renegotiation. Furthermore, make sure that there are no gaps in understanding how the agreement will be implemented.

These discussions will set the stage for brainstorming plans and mechanisms that will support the agreement through turbulent times too.

Jointly search for contingency solutions

Once you have identified potential landmines in the agreement, you are now ready to design

plans, terms and systems that could address them. Engage the other parties in brainstorming creative ideas so that the end result is a joint effort. They will then feel ownership and responsibility in managing and preserving the agreement too.

Patrick and Kevin might have come up with buyout plans and agreements. They might have crafted a well-defined decision making policy and agreed on an advisory board that would arbitrate when they could not reach agreement. An effective dispute resolution system could also have been put in place. They may even have thought of ways of managing the family relationships better with regular family retreats where business discussions would be off-limits or a forum where the stresses between family and business relationships could be openly discussed. They might also have sharpened their mutual understanding of roles, responsibilities and deliverables leaving less room for misunderstandings.

This phase of the negotiation is critical for the vitality and health of the agreement.

Put it in writing

People generally comply with written agreements more so than with verbal ones. The final step is to build these plans and contingencies into the agreement by drafting them, agreeing on the language and writing them up as part of the signed document. Your agreement will now address not only what you actually agreed to, but also how it will be implemented, managed and preserved over the long haul.

Although following these steps will not eliminate all potential problems from ever occurring, because we cannot think of every possible eventuality, it will however greatly enhance the chances of a productive and long-lasting agreement.

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