

NEGOTIATION BASICS FOR ENTREPRENEURS

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Webinar Agenda

- Preparing for Negotiation
- The Negotiation Process
- Negotiation Strategies and Principles
- Common Mistakes that Entrepreneurs Make During Negotiations
- Other Resources

Preparing for a Negotiation

- Consider hiring a lawyer
- Do an honest inventory of your strengths and weaknesses
- Clearly define your goals for the negotiation
 - BATNA
- Reflect on past negotiations
- Think about appropriate method and forum
- Consider cultural differences

Preparing for a Negotiation

- Understand your counterparty as much as possible
- Consider how disproportionate leverage might impact the negotiation
- **RESEARCH**
- If working off of a draft document, know and understand the document backwards and forwards

Negotiation Process

1. Informal discussion to source potential partner and identify key business points
2. Initial formal negotiation
3. Negotiate term sheet (depending on deal)
4. Draft and negotiate definitive documents
5. Sign documents

Negotiation Strategies

- Positional / Distributive / Zero Sum
 - Each party states their position and tries to push the final negotiated agreement to be as close to their position as possible
- Principled / Integrative / Interest Based
 - Each party states their priorities in the negotiation and their ideal conceptual desired outcomes and tries to push for deal points that serve those outcomes

Positional Strategy - Strengths

- Quickly dispatch low-hanging fruit
- Good for one-off transactions
- Expedites negotiation in a low value, high negotiating cost situation
- Some terms, by their nature, must be negotiated using a positional strategy

Positional Strategy - Weaknesses

- May lead to mistrust or tension
- May crater a deal if both sides are inflexible
- May set a bad precedent for the relationship
- Strategy itself is inflexible

Positional Strategy - Examples

- Early Anchoring
- Posturing
- Splitting the difference
- Ultimatums

Principled Strategy – Strengths

- Creates more mutual value – not zero sum
- Encourages parties to collaborate
- May reveal and solve problems the parties hadn't yet contemplated
- Builds understanding and trust for a long-term relationship

Principled Strategy – Weaknesses

- Takes more time
- Need trust to build trust
- May be overly complicated for a small or straightforward transaction
- May not mesh with counterparty's style or comfort

Principled Negotiation - Examples

- Explaining the need for a given term
- Asking more questions of the other side than supplying information about yours
- Creating a “suite” solution
- Establishing objective criteria that determine whether a good deal has been reached

Negotiation Styles

- Competitive
 - Zero sum approach
 - Exploiting leverage
 - Likely to stonewall
- Cooperative
 - Collaborative; inviting
 - Maximize size of the pie
 - Develop range of alternatives and brainstorm together

Negotiation Styles

- Accommodating
 - Easily yield to the other side's requests
 - Prioritize relationships and positivity over winning
- Avoidant
 - Passive-aggressive
 - Skirt issues

Common Mistakes by Entrepreneurs

- Not understanding the real relationship contemplated
 - One-time versus repeat player
 - Leverage
 - Counterparty
- Treating all issues as equally important
- Ignoring biases
- Lack of advance planning and preparation
- Lack of emotional control

Common Mistakes by Entrepreneurs

- Inaccurate valuation
- Insufficient confidence
- Define “winning” as “reaching agreement”
- Focus only on their own interests
- Afraid to ask for protection/unknowingly create problems that arise later

Resources

- National Venture Capital Association
- Clerky / CooleyGO
- EDGAR
- Law firm client alerts
- Lawyers
- Advisors
- Negotiation seminars and simulation courses
- Entrepreneurial Negotiation by Samuel Dinnar and Lawrence Susskind