

Quadrant II - Notes

Paper Code: ADR1011/ADR0634

Module Name: Seventh Element – Commitment

Module No: 17

Introduction

Negotiation is a process designed to resolve dispute without intervention of third party, especially Court. Therefore, as a primary requirement of negotiation, the parties must avoid court under all circumstances.

The point to be considered is that, negotiation is not a magic wand, its just another short, quick and efficient procedure to resolve the dispute. Instead of settlement agreement, the negotiation may end in deadlock. Sometimes, even settlement agreement does not end in resolution of dispute. As the process of negotiation is incomplete till the settlement agreement is honoured completely.

Settlement agreement is a contract agreed by both disputing parties. Through this contract new rights and liabilities were created with a promise to fulfil it. Therefore, the real success of negotiation lies in commitment to the negotiated agreement.

Honouring the settlement agreement

The settlement agreement between disputing parties has force of law. However, the point to be considered is, the negotiation has been ideated to avoid court, therefore, support of law for a contract cannot be a persuasive argument. The requirement of a professional negotiator is to ensure the fulfilment of the terms and conditions voluntarily. The final and seventh element of negotiation discusses the strategies to ensure commitment to the negotiated settlement agreement.

Standard contents of settlement agreement

Even though the disputing parties or professional negotiator main focus will be on avoiding litigation, the clauses of the settlement agreement needs to be drafted by keeping all eventualities in mind. It must contain enforcement clause in case of breach of settlement agreement.

The settlement agreement needs to be paragraphed and as far as possible use short paragraphs. Each duty or right needs to be mentioned in a separate paragraph. It is always advisable to have a definition clause to avoid any confusion. Avoid expressing same idea by using different terminologies. It always preferred to use same words and phrases to explain same concept. And finally most importantly, all the agreed clauses should be enforceable law.

Ensuring the Commitment

The seventh element do not deal with drafting of settlement agreement. It mainly deals with the ensuring commitment from the parties to the dispute. The most common belief is that, ensuring win-win situation helps in achieving commitment. It is submitted that It is oversimplification of the complex issue.

Ensuring commitment becomes more complex when multiple parties get involved. The important task of the negotiator is to make list of interest of each one and address them one by one. At the time of signing the agreement, it is important ensure the authority to sign. Many times, the authority is given orally, but such oral authority can become fatal during litigation. As a negotiator there is a need to get proper authority letter.

It is not only important to address everyone's interest, it is important to get agreement of each party involved. Whether party is important or unimportant, small or big, main or fringe, everyone's agreement is a necessity to ensure commitment to the agreement. In addition to the above, a clause creating moral liability on the party to honour the settlement agreement.

In some cases, confidentiality becomes one of the important concerns of the parties. As a routine, the negotiator must make a mention of the confidentiality clause.