Commitment

A commitment is a statement or a binding promise that reflects a party's obligations. Good commitments are realistic, well planned, free from ambiguity, and can be implemented or executed against. There are three types of commitments in a negotiation. First, there is the parties' commitment to the process of negotiation which is the overall deal governance. The goal for successful deal governance is to make the process more collaborative and efficient and includes clarity on roles, decision protocols, and meeting logistics. Second, there is the commitment to finding an option that meets the parties' interests. Third, there is a commitment at the end of the negotiation to formalize the parties' commitment in an agreement.

Commitment to the Process

In terms of overall deal governance, the parties should confirm the negotiation timeline and the meeting location and cadence. It is also important to establish the level of commitment desired in each session. Is the goal to express views, generate options, develop joint recommendations, reach a tentative understanding, or commit to a firm agreement? Clearly setting this expectation will maintain forward momentum in the negotiation.

Decision records should be a key component of the governance process. A decision record is issued immediately after each meeting and includes a summary of what was agreed. The other party is required to review the decision record and confirm its accuracy within a designated period. Decision records are an extremely beneficial tool in lengthy negotiation cycles where it is common for a party to forget the details of an agreement which was reached early in the process.

When establishing the deal governance process, it is also important to understand the authority of each party at the table and any further approvals required for the other party to make a binding commitment. To the extent the decision-making authority of the other party at the table is limited, clearly document what additional approvals (i.e., CEO, CFO, or Board of Directors) are required to make a commitment.

When evaluating decision-making authority and its impact on securing a commitment, it is important to understand the frequency by which issues can be escalated and the timeliness of a response. To mitigate any confusion on authority, clearly document the authority of the other party's representatives. Are they a negotiator, recommender, signatory, or approver? In addition, it is important to identify escalation points for issues where the table team has reached an impasse.

Commitment to Option Development

When you have agreed on a deal governance process and understand the authority of the parties, it is time to focus on the second level of commitment, namely communicating interests and discussing options. Be clear with your interests and be flexible regarding options by which those interests can be met.

If you cannot find an acceptable option, then you may need to assert your BATNA, either in a subtle or direct manner. Remain calm and confident as you navigate through the negotiation and refrain from feeling compelled or forced to do anything. If the other party refuses to negotiate with you in a collaborative manner, or you do not like the terms being discussed or options generated, you can always pursue your alternative.

Commitment to Formalize the Agreement

If you can find an option that meets your interests, you can move forward to the next stage of commitment, formalizing the parties' agreement into a binding contract. Once you have agreed on the terms, secured the necessary approvals, and performed a thorough business and legal review, it is time to execute the agreement and have a celebratory cocktail.

Conclusion

It is important to understand and document the process by which the parties will make a formal commitment. It starts with strong deal governance and continues with a collaborative discussion on interests and options. If successful, the parties can formalize the agreement and celebrate accordingly.