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INTERNATIONAL NEGOTIATION ACADEMY

Negotiation: The Genesis of Management

Issue 43
June 2009

The 'Texas Shoot Out' and other ways to get out of deals!

Most partnerships, joint ventures, marriages and many contracts and alliances start off with big plans, grand expectations, speeches and champagne!

Statistics indicate that the majority will, somewhere in the future, due to many personal and financial reasons, reach a point of such conflict or deadlock that parties want to 'get out'!

Not many people consider (at the time of entering the relationship) the fact that it is likely that there will be a **break-up time in future**. Then, when they later want to 'get out' of deals, their options are often extremely limited.

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Some of the most common reasons for individuals wanting to exit partnerships or contracts are things like

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insolvency, change of company control, death or terminal illness of a shareholder, **severed relationships**, ego clashes, conflict in business culture, emigration and many others.

The contracts that govern the relationship between you and someone else seldom make provision for termination by one party. Your **country's legal system** may provide laws of termination (such as divorce and labour laws), but such laws seldom apply to the kind of deal that you have signed. Suppose for instance that you bought a farm or holiday cottage with your friend or that you started a 50/50 partnership with your brother in law!

It might be a good idea to sign the **escape**

clause (or pre-nuptial) when the champagne is bubbling!

Legal remedies for your dilemma are seldom sufficient, so the only refuge you may have to get out of some of these relationships and agreements may be to employ a **mediator, nego-**

tiator or to initiate some form of intervention by a third party or by yourself.

Different methods could be used to terminate a relationship; but we want

to consider a few unique but well practised ways towards a **speedy escape** (lets hope that you have already included these clauses in your initial contract)!

1. 'The Texas Shoot-out'

This escape clause and principle are often confused by terms such as the "**Savoy clause**" or the "**Russian roulette**" escapes.

The principle of 'the Texas shoot-out' is most commonly applied where each member owns 50% of shares and one or both partners want to end the

relationship.

This mechanism commences with one member notifying the other member of his/her intention to sell to that member his/her 50% shares at a specific price. This offer **must** then be accepted; otherwise the declining

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3

member is **obliged to sell all his/her 50% shares** to the proposer at the same price.

For example; lets assume that John and Mary have a 50/50 partnership in a furniture factory in town. The net worth of their venture is R5 million. John wants to get out of the business due to constant conflict with Mary. They fortunately had included a 'Texas Shoot-out' clause in their initial agreement.

John notifies Mary that he offers his half of the business to her for R2 million. Now Mary must decide whether she accepts this offer or decline it!

If Mary accepts the offer, she pays John the R2 million and he goes off and away with the cash in his pocket.

If she declines, she has to return the same offer to John (R2 million) and John must accept (ending up owing the furniture factory)!

This method is both **brilliant and ruthless!** It is more complicated than what it seems at first. This is an **extremely delicate process** where **accountants and psychologists** have to sit together to determine a bid that will give you

what you want (if your offer is too high, you may end up paying it yourself)!

There are several advantages and disadvantages in employing this method. The main advantage is that it is **quick and final** (and often there are no or very few 'bad feelings' between partners afterwards). The disadvantage, though, is that you could end up owning something that you never desired to possess.

There are other principles and clauses that can be used as well. It is important to remember that each has its own unique disadvantages. The method agreed upon should therefore be considered carefully.

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2. 'The Mexican shoot-out'

A variation of the mechanism discussed above (the Texas shoot-out) is also common in a 50:50 joint venture. It is sometimes called the 'Mexican Shoot-out or the 'Dutch auction'.

In this case the parties submit sealed bids indicating the minimum price for which they would be prepared to sell their 50% share. Whichever sealed bid is the higher 'wins' and that bidder then **buys the 'loser's' share** at the price indicated in the **loser's sealed bid**.

3. 'Multi-choice procedure'

When the parties do not wish to commit themselves to some of the above 'drastic' and perhaps more dramatic termination procedures, they can, in many cases, use a **softer option** such as a 'multi-choice' process.

In this case, a neutral mediator or arbitrator may provide a series of options, one of which the parties **must** agree on, if the deadlock cannot be resolved. If they cannot agree, the mediator then makes a final choice for the partners.

The benefit of such an agreed process is that, when faced with the implications of the next step, the parties are thought to be better able to compromise.

4. 'Cooling off/Mediation'

Although this is not strictly a termination clause, both parties commit themselves by **agreeing to 'mediate until a solution is found'** (sometimes providing that if they cannot mediate out, the mediator will make a reasonable decision).

5. 'Deterrence approach'

Parties could agree to accept a 'fair price' from an **independent valuator**. Often it is accompanied by some punitive measures directed to the party who 'wants to get out'.

Punitive' measures could involve an undertaking by the relevant shareholder not to sell its Interest in the alliance **for a certain period of time**.

6. Other Principles

There are many other methods and self-designed ways to terminate the multitude of different relationships that people enter into during a lifetime.

Taking all positive and negative aspects in consideration, it could still be to the advantage of partners, like a well thought-out pre-nuptial agreement before a marriage, to start a relationship off soundly, in clear terms, thereby preventing many serious problems at a later stage.

Partnerships (and marriages) are often successful because of good **communication, proper planning, flexibility and honesty**.

Under these circumstances the above principles and methods are then probably not needed due to the fact that partners do have the necessary empathy, reasonableness and understanding to negotiate the exit as well as they negotiated the entrance.

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*(My appreciation to the input of
Stephan Steyn from Auditing Firm:
Louis Kruger & Co of Randburg, SA)*