



# Negotiation Strategies

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# Outline

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- Negotiation and Influencing Basics
- Negotiation Style
- Developing the Business Opportunity
- Progressing Negotiations
- From Agreed Terms to Binding Contract
- The Softer Side of Negotiation

# Take-Home Messages

- Negotiation is participatory
- Positional negotiation is not effective
- Power in negotiation comes from preparation
- Preparation is necessary prior to any interaction with the other party
- Ninety percent of the negotiation process is done before the first meeting
- Listening is probably your most important skill to develop

# The Art of Effective Negotiation

*“in good deal making, 90% of the real negotiation happens before you sit down to negotiate”*

*“effective negotiation is 90% attitude and 10% technique”*

- Know yourself
- Know your own organization
- Know the opposite party

# Definitions and Guidelines

- Negotiation facilitates agreement when some of your interests are shared and some are opposed
- Negotiation is the process of evolving communication to get from **opposition** to **consensus**, manage conflict and reach agreement
- Negotiation principles apply as much to your internal team as they do to an outside party

# Definitions and Guidelines

- Negotiation and influencing skills are critical to getting the best deal, facilitating problem solving, gaining support and building co-operative relationships
- Negotiation is central to gaining agreement and exercising influence
  - The ability to influence others and resolve conflict is at the core of successful business

# Definitions and Guidelines

- Negotiation is an integrated process requiring:
  - Effective communication
  - Development of consensus (internal & external)
  - Process Management
  - Influence building and relationship development
- Success in negotiation depends on confidence
  - Confidence enables and arises from a) careful advance planning to maximize options and b) working creatively during the negotiations to optimize the outcome
- Success is ultimately measured by the potential contribution of a deal to the bottom line of your portfolio
- Sometimes the best deals are the ones not done!

# Preparation: The Elevator Pitch

- Your first assignment as a BD person
- Template:
  - **We provide** (state the nature of your product/service)...
  - ...**for** (who is the target audience)...
  - ... **who want** (what does this audience need)...
  - ...**and are looking for** (what audience values).
  - **Most people aren't even aware that** (what should they know but might not know to ask).
  - **We always offer** (case building, foundation for differentiation)
  - **To help our audience make the best decisions possible, we offer \_\_\_\_\_ which contains** (evidence)



# Negotiation Style

# We All Have an Individual Style

- Style is a consistent pattern of behaviors emanating from an individual and recognised by others
- Distinct negotiating styles
  - Warm
  - Tough
  - Numbers
  - Dealer
- The role of style in negotiation enables us to understand and manage
  - Ourselves
  - Our internal team
  - The opposite party

# Character as the Basis of Negotiation Style

- Style is influenced by innate character traits
- Style can be fine-tuned to adapt to different negotiation scenarios - your fundamental character does not change
- Complementary styles make a successful negotiating team
  - Adapting style can enhance and improve intra-team co-operation

# Where Does Our Style Come From?

- Genetics
- Upbringing
- Social background
- Education and training
- National culture
- Reaction and response to other people
- Professional experience

No one fits exactly into one style, but most of us have a 60-80% fit with one

To recognize your style, you need to look inside and find out how others see you

# Warm Style

## Pros for a negotiator

- Friendly, good listener
- Emphasizes common interests
- Constructive and helpful
- Informative and open
- Creates climate of confidence
- Patient, calm
- Supportive team player
- Trusts the advice of others

## Cons for a negotiator

- Interpersonal relations too important
- Difficulty saying “no”
- Can lose sight of own interests
- Conflict averse
- Trusting and naïve
- Deferential and apologetic
- May struggle under pressure or with responsibility
- May be perceived as weak

# Tough Style

## Pros for a negotiator

- States position assertively
- Dynamic, takes control
- Decisive and quick to act
- Seizes opportunity
- Takes the lead
- Rises to the challenge
- Gets the best for their side

## Cons for a negotiator

- Autocratic vs. team player
- Impulsive and impatient
- Inflexible and proud
- Overbearing
- Doesn't listen well: "take it or leave it"
- Quick to criticize, even colleagues

# Numbers Style

## Pros for a negotiator

- Facts, logic, detail oriented
- Methodical and systematic
- Persistent and patient
- Prepares well, manages risk
- Sticks to policy and procedures
- Weighs all alternatives
- Confident in own skills

## Cons for a negotiator

- Not intuitive with people
- Lacks creativity
- Expects to convince with logic
- Analysis paralysis
- Predictable: no surprises!
- Stubborn and resistant to change
- Fails to see other point of view
- Too literal: may miss golden opportunity

# Dealer Style

## Pros for a negotiator

- Socially skillful, charming, cheerfully cynical
- Avoids giving offence
- Adaptable, flexible, creative
- Persuasive, articulate
- Perseverant
- Thinks on feet
- Understands true 'win-win'
- Seeks opportunities to make it work

## Cons for a negotiator

- A deal at any price: "deal junkie"
- Pushy
- Over solicitous: "sucks-up"
- Shifts position too fast, too often
- Alienates through talking too much
- Perceived as tricky, insincere, untrustworthy
- Fails to prepare, plan or listen properly

# Beyond style, all negotiators should.....

- Have the willingness to prepare
- Enter negotiations with optimism and ambition, projecting high expectation and self confidence
  - There is striking research evidence that people who expect more get more
- Have commitment to integrity and courtesy
  - Even polar opposites are entitled to treatment with respect!
- Develop proactive questioning and listening skills
  - Make best use of questions, body language, interjections
  - Develop supporting statements, clarifying statements & summarizing statements to elicit information and optimize communication



# Developing the Business Opportunity

# The Negotiation Process



**Managing the process**

**Due Diligence**

**Close the deal**

**Close the gaps**

**Address needs, resolve the issues**

**Identify the gaps**

**Communicate interests, issues and needs**

**First meeting(s)**

**Know your potential partner: culture, strategy, management, markets**

**Know the product or technology and its position in the marketplace**

**Know yourself & your organization: personal style, company strategy**

# Definition of Need

- First know thyself
  - Establish effective lines of communication to key stakeholders in your organization
  - Build consensus on organization needs & strategy
  - Develop BD objectives and priorities
  - Establish criteria for Strategic Fit
  
- Proactive Reviews
  - Forced ranking opportunity assessments
  
- Reactive Reviews
  - Degree of fit with predefined criteria

# Develop Internal Consensus

Technical Review Team

With Project Owner (with operational responsibility)

With Alliance Manager (if not Project Owner)

Within Business Development Team

With Project Stakeholders

With Senior Management

*Use your powers of influence!*

# Deal Team Concept



# Establishment of Internal Corporate Objectives

- Define strategic purpose of partnering
  - Cash
  - Pipeline gap
  - Experience in pre-clinical or clinical development
  - Meet commercialization goals
  
- Define the market opportunity
  - Elaborate commercial potential - be realistic, consult experts
  - Understand competition, potential differentiators
  - Develop financial model and understand sensitivity of key parameters; e.g. how changing the numbers changes the proportion of profit share between licensor and licensee
  - Prepare strategic options as a decision tree and the financial implications of partnering at different development time-points
  - Prepare a product life cycle plan

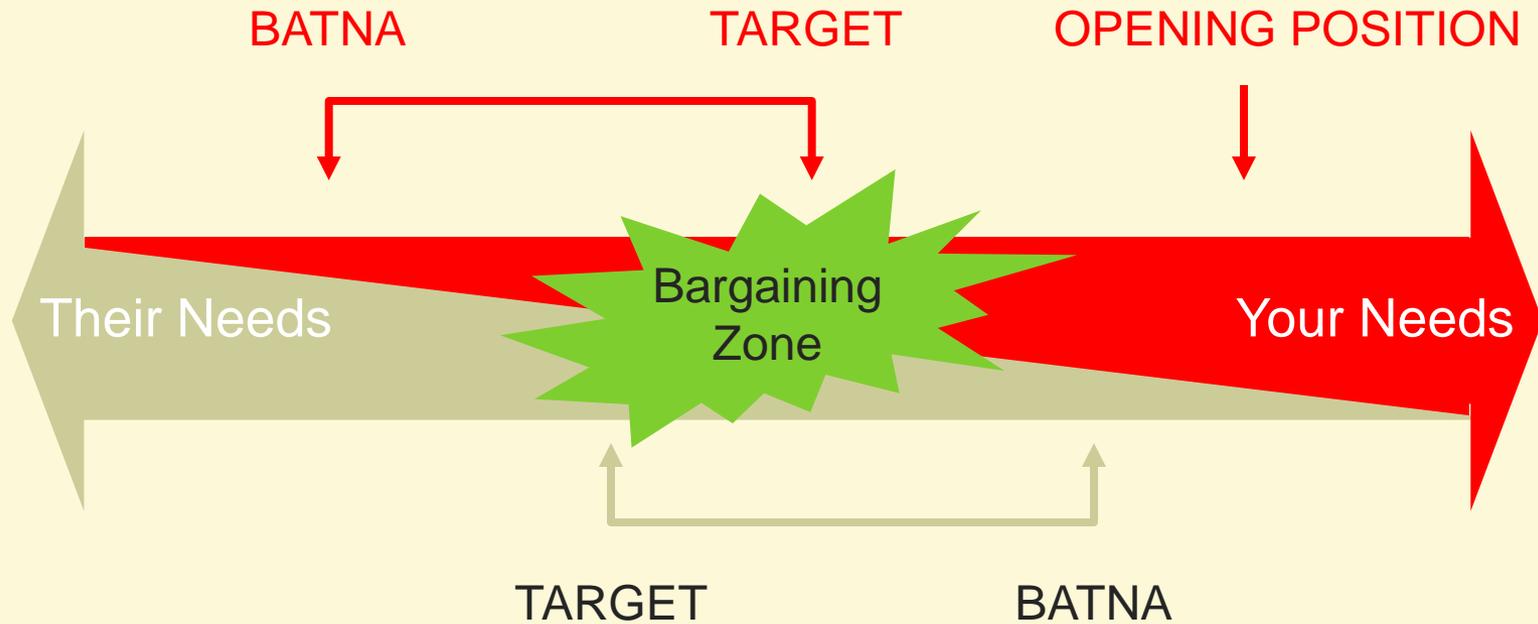
# Align Objectives to Potential Partners

- Is there one ideal partner for the opportunity?
  - Based on e.g. Strategy, capabilities, industry reputation, therapeutic focus, deal-making history
  - Synergies with your organization obvious
  - Candidate for 'Proactive Review'
  - Approach to negotiation can be more targeted and customized to the ideal partner in question
- Or are there potentially many contenders?
  - e.g. Earlier stage assets requiring initial exploratory research phase
  - More effort required in initial 'finder' phase, to identify partner with ideal strategic fit
  - Candidate for 'Reactive Review'
  - Approach to negotiation initially more general (one size fits all) then customized once probable partner identified

# Maintaining Alignment to Internal Corporate Objectives

- Create a communication plan within your company so the message is always the same
- Establish and communicate criteria for identifying potential partners and their fit to your organization
- Begin to define and structure the type of deal your organization is seeking
  - Understand your Best Alternative to a Negotiated Agreement (BATNA)
  - Create a rough outline of a term sheet including ballpark figures for financial terms and trigger events for payments
  - Analyze comparable deals
  - Reaffirm your BATNA in the context of your draft term sheet
- Ensure the broad definition of the deal is communicated effectively internally
  - Secure buy-in as early as possible in the process

# Visualize the Opportunity



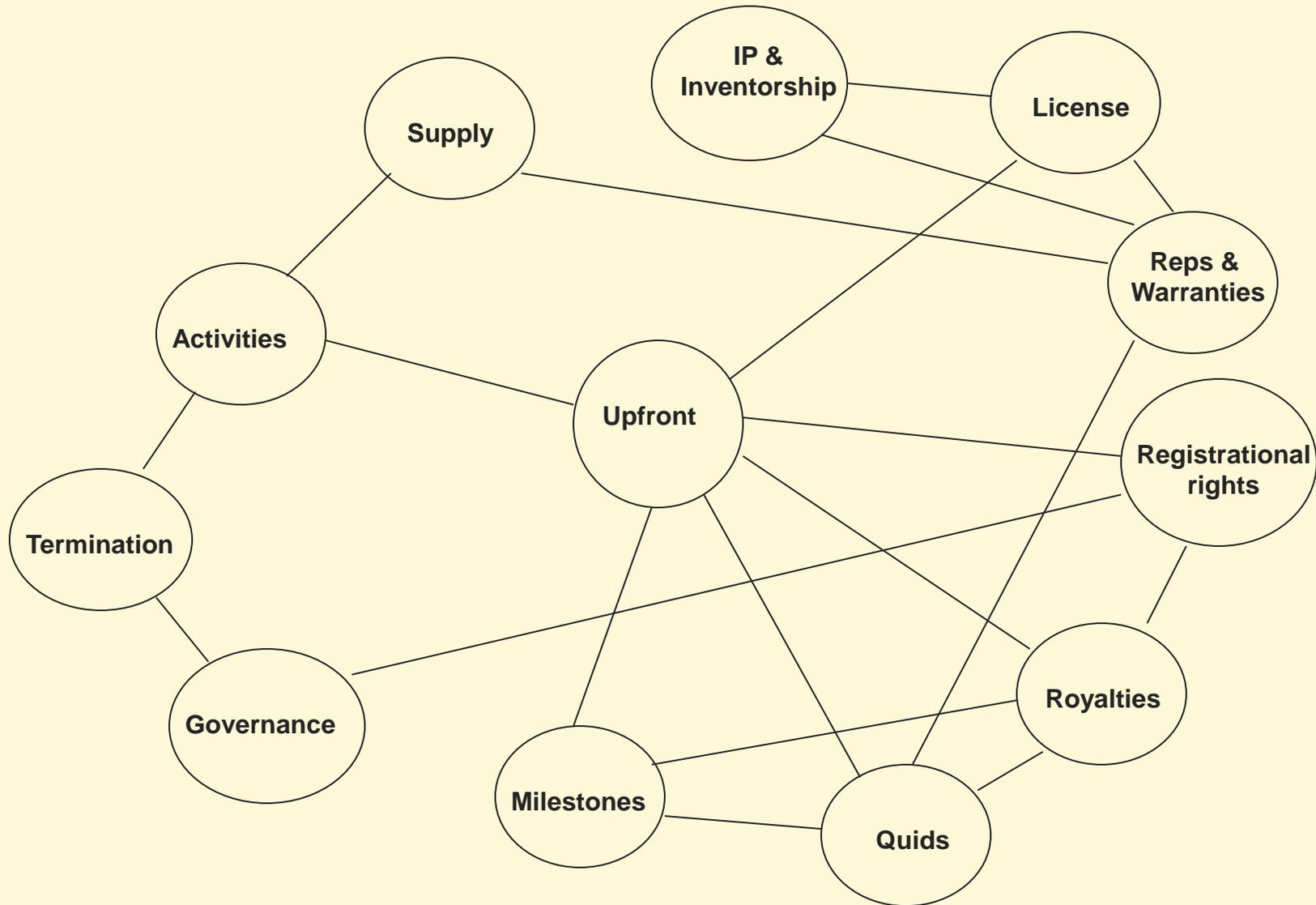
# Planning Tools

- Create a map of the issues – note what a change in one issue will do to another
- Set your limits
  - What is your BATNA? This will be the low end of your limit
  - What is their BATNA? Difficult to estimate, but very important
  - What is your target? Your target should be ambitious without being ludicrous. It should be near their BATNA
- Set your first offer and ensure this is communicated to your key stakeholders internally
  - Even if the other party offers the first term sheet, you must keep your first offer in mind

# Examples of Negotiation Issues

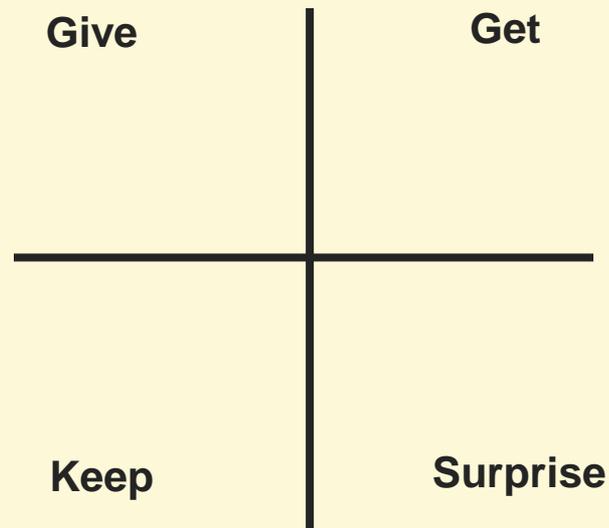
- License
- Payments
  - Upfront, FTE support, success fees, milestones, royalties
- Activities of the Parties: obligations vs. responsibilities
- Other considerations (Quids?)
- Manufacture and supply (Bulk / Formulation / Fill / Finish)
- IP Inventorship / Prosecution / Enforcement
- Registration Rights
- Governance and Dispute Resolution
- Representations and Warranties
- Termination

# Interdependence of the Issues



# Planning Tools

- Make a chart of what issues or terms you will give up, what you must keep, what you want to get, and what could be a surprise.
- Create a chart of information that you will disclose to the other party, keep from the other party, want to get from the other party, and what would surprise you if they gave it to you.
- Remember, **information** is **power** in a negotiation



# Preparation for Initial Contact

- Establish the objective for the initial contact
- Have all your planning tools together and completed
  - Information needs, possible scenarios, etc.
- Prepare your introduction statement
  - Envisaged relationship
  - Balance of power
  - Possible outcomes and probability of success
- Determine who should be contacted and who should make the contacts. Agree on “one voice”
- Make initial contact; assess and establish interest
- Discuss and agree next steps
  - Transfer of non-confidential materials: have all relevant publications, patents, posters, etc ready in pdf form to send out upon request
  - Define and agree time frame for review and follow-up period to enable you to meet internal expectations

# Building the Scientific Contact

- Define what your organization requires to build the foundation of a full binding agreement with the party
  - Transfer of proprietary materials under an MTA?
  - More collaborative involvement in a predefined Feasibility Study?
- Secure the necessary co-operation and buy in from your scientific and technical specialists
  - Ensure your key individuals know their counterparts in the partner organization
  - Keep technical achievability aligned to strategic intent, even at this early stage
- Work with your internal specialists to outline the workplan for this stage of the interaction
  - Bear in mind that all provisions (e.g. obligations, ownership of inventions, confidentiality, consequences of termination) must align with the intended terms of the eventual full agreement

# Guiding Principles

- Openly discuss needs and expectations of your organization
- Invite other party to describe their needs and expectations
- Establish agreement on scope & Key Success Factors which will guide decision-making in the project
- Codify into statement(s) that define the spirit as well as the intent of the desired relationship

# Overall Goal of Negotiation: to become the Preferred Partner

- Partnership is a social as well as a legal contract
  - Anticipate balance between explicit terms and operational flexibility.  
Be pragmatic
- Get beyond the other party's positions; understand their interests and priorities and balance with yours
- Proactively seek solutions which balance needs
- Use objective criteria to support decision-making whenever possible
  - Individuals move on; minimize need for subjective interpretations
- Keep personalities out of the negotiations
- Remember: *Preferred Partner* is not necessarily *Exclusive Partner*
  - Licensor may be using this deal to rank you against other opportunities

# Positive Attributes of the Negotiator

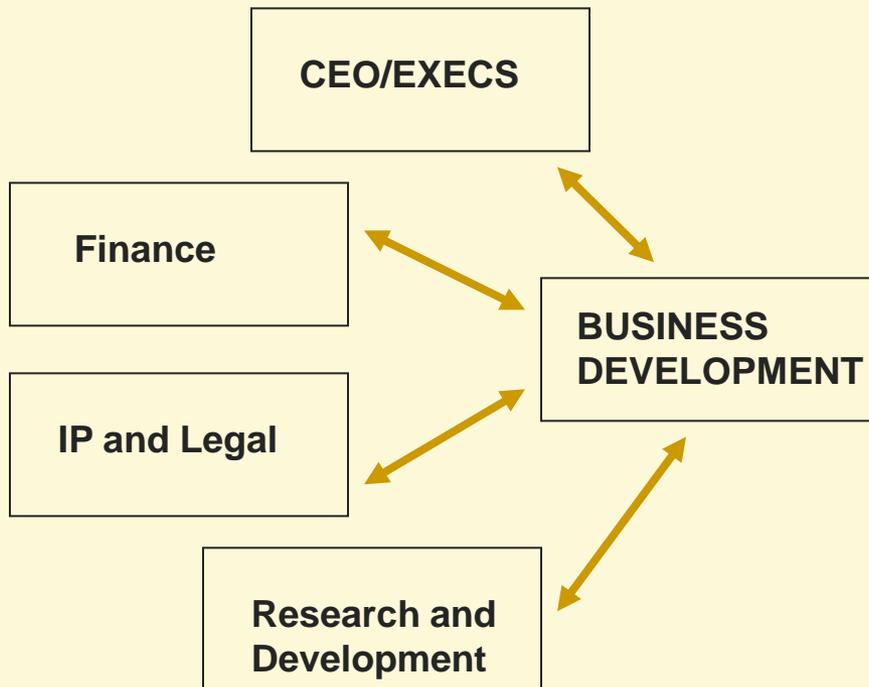
- Good listening skills
- Clear, consistent vision of their goals
- Maintains a long-term vision for the partnership
- Blunt and candid about their wants and needs
- Honest and upfront regarding value and limitations of their offering
- Good market awareness
- Trustworthy and professional
- Values integrity: keeps (most) of their promises
- Fair and consistent
- Discrete and considerate
- Good sense of humor
- Clear ability to see the other party's point of view



# Progressing Negotiations

# It's all about Communication

## Internal Team



## Partner



# Preparation

- Negotiate a bilateral CDA
  - Do this quickly and efficiently
- Have your confidential information package ready
  - Products: detail of pre-clinical studies (ADME, tox, *in vivo*) as pdf files
  - Products and technology: include protocols
  - Customize materials for the party in question, aiming to anticipate their questions

# First Confidential Interaction

- Create agenda jointly with the other party
- Deliver messages effectively; stipulate timelines, constraints, expectations
- Probe how the other party views the opportunity, their needs and their priorities. Refer to your information chart... ask the questions! Gather as much information as you can now
- Establish open dialog enabling flexible problem solving for mutual gain
- Identify areas of agreement and disagreement to the satisfaction of both parties
- Identify action points; follow up promptly and definitively

# Due Diligence

- Due diligence underpins the entire negotiation process
  - Shows willingness of both parties to prepare and be professional
  - Cooperation in fielding relevant specialists is essential
  - Key issues identified, addressed and resolved early
- Performed through electronic data rooms and site visits
  - Compound (materials)
  - Scientific / technical
  - Intellectual property
- Due diligence = effective communication in action
  - Be open and swift to respond
  - Do not become defensive
  - Learn from the experience

# Due Diligence – Electronic Data Rooms

- Convenient for many types of diligence
  - Scientific – pre-clinical reports, animal toxicity studies, manufacturing information (SOPs, QA), clinical study reports
  - Intellectual property
  - Financial documents
- Organization of information is critical
- Control of access is key
  - Access can be staged, printing can be restricted
- Some things still stay out of data rooms
- Complemented by on-site visits

# Due Diligence & Site Visits: Managing your Team

- YOU are in charge
- Select and convene your team well in advance
  - Agree each person's assignment
  - Agree any "off-limit" topics
  - Agree to answer only questions asked by the other party
  - Ensure all disclosures can be substantiated
  - Assure your team that "I don't know" is an acceptable response
- Ensure that everyone looks and behaves professionally
- Regroup with your team afterwards to discover what has been learned

# Due Diligence & Site Visits: Managing the Other Party

- Give your visitors privacy
- Establish and communicate your policy on copies of documents being removed from the building
- Clean white-boards, clear meeting room of irrelevant materials
- Make sure labs are clean and offices are organized
- Provide refreshments; arrange hotels and transportation
- Check on progress, but don't hover
- On completion, invite them to dinner with your team

# Due Diligence: Science and Materials

- Obtain questions in advance
- Organize all reports and protocols – provide in meeting room if possible
- Have all manufacturing information (including information or approvals from manufacturer / regulators) to hand
- Ensure that key specialists are available where required and are fully briefed

# Due Diligence: Intellectual Property

- Prepare document room (electronic or physical) with all relevant files
- Compile applications / patents and their status and prosecution history in spread sheet format
- Have invention disclosure system ready
- Assist other party in understanding specific requirements for inventor law
- Exclude FTO opinion and other recommendations of counsel

# Beyond Due Diligence: Final Term Sheet

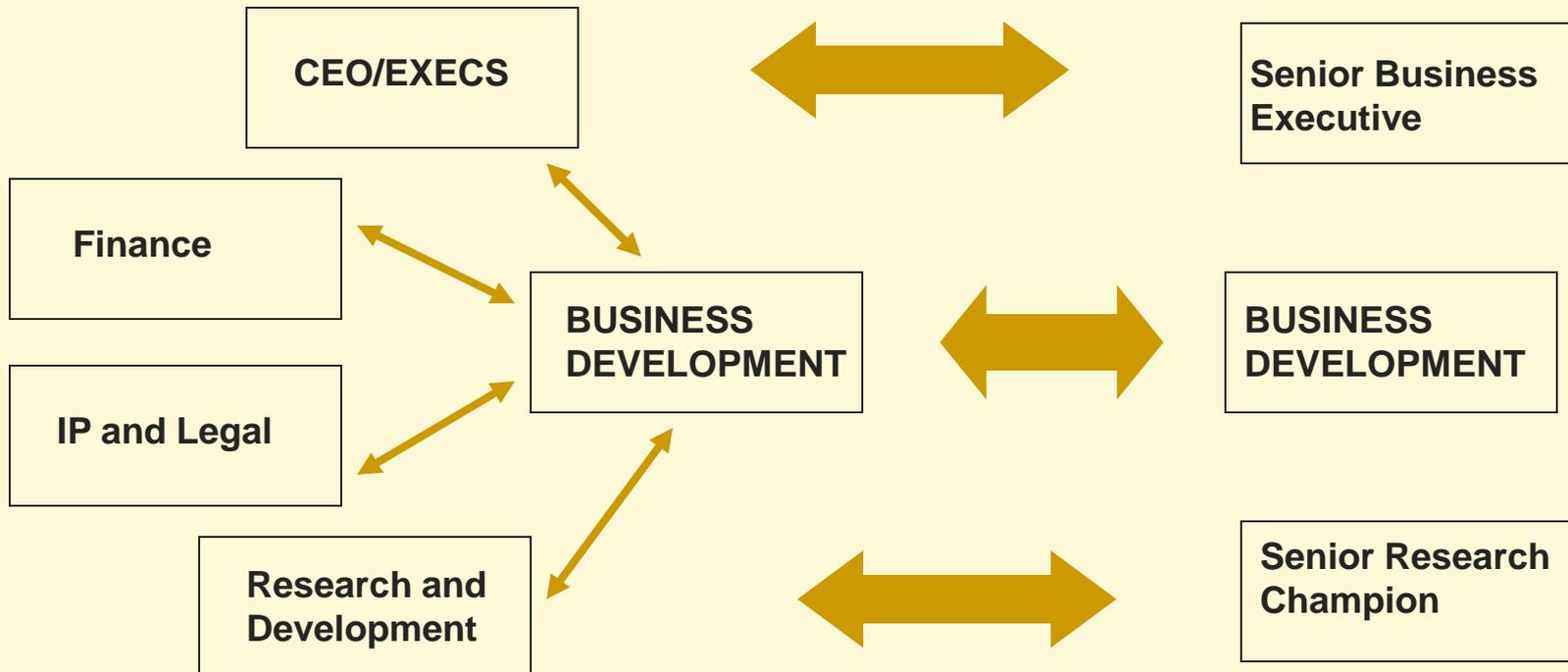
- Pressure-test your organization's interests and priorities as negotiations proceed
  - Negotiations may have created new opportunities
  - Conflicting priorities may drive compromise... yet compromise may not always be the best solution
- Define the scientific/technical scope in detail
  - Continue to build and manage contact between yours and their specialists
  - Finalize workplans
  - Agree go/no go decision points, especially early in the collaboration
  - Stay on top of IP created through these interactions
- Due diligence may not be complete before the term sheet is finalized

# Communication

Coordinated message + relationship building = agreement with minimal conflict

## Internal Team

## Partner



# Summary of Best Practice

- Plan ahead
  - Preparation builds confidence
- First impressions are critical – make yours a good one
- Manage communication channels, internally and with the other party
- Commit agreed points and open issues to writing – share freely
- Take note of recurring contentious issues
  - Keep your introduction statement in mind - but convene with your team afterwards to ensure your position is reasonable
- Never postpone resolution of critical issues until legal drafting

- 
- CASE STUDY BREAK HERE



# From Agreed Terms to Binding Contract

A Nuts and Bolts Approach

# Setting the Scene

- Establish what your agreed term sheet represents
  - Overall opportunity
  - Responsibilities
  - Value creation opportunities
  - Strategic priority for your organization
- Refer back to your term sheet negotiations and any key issues identified with the other party
  - Don't forget the agreed timetable to reach closure
- Identify who will be involved in the legal drafting process on your side
  - Establish contact with equivalents in other party
- Brief your transaction team on all of the above

# Building Strategic Agreements for the Long Term

- Most deals fail to realize their full potential due to early termination
- Impact of premature termination is far greater than failure to deliver downstream milestone and royalty payments
  - Opportunity cost
  - Disillusionment among collaborating scientists
  - Failure to meet board/senior management/investor expectations
  - Exacerbation of internal communication challenges
  - Damage to external reputation
- Aim to immunize your deal against common partnership pitfalls
- Mitigate the risk of exposure to factors beyond your control

# Define the Deal Components

- Work with your internal team to ensure that all phases of the deal (research, development, commercialization) have been thoroughly thought through
- Construct decision trees for each deal phase (not to be shared with the other party) to give you maximum negotiation flexibility through each phase
- Identify deal breaker issues within each phase with key internal stakeholders and address them objectively and fully
  - You will be in a more commanding negotiation position if you are aware of your own issues before they are raised as such by the other party

# Deal Components - Research



- Research issues include
  - Research term, options to extend, research plan, sponsored vs. self-funded, where is the hand off
  - Roles and responsibilities
  - FTE commitment – fixed or not?
  - Resource allocation and cost allocation
  - Governance
  - Intellectual property – who owns or controls?

# Deal Components - Development



- Development issues include
  - Definition of product profile, development plans, resource commitment, manufacturing responsibilities for clinical supply, regulatory affairs, roles and responsibilities, cost sharing or reimbursement procedures
  - Selection criteria for development candidate (and back-up?)
  - Opt out provisions, rights to initial development compound vs. next generation / back-up compounds

# Deal Components - Commercialization



- Commercial issues include
  - Commercialization plan
  - Manufacturing responsibilities for commercial supply
  - Resources
  - Roles and responsibilities
  - Cost sharing and reimbursement
  - Trade-offs for retained rights
  - Royalty vs. profit sharing

# Commencement of Legal Drafting

- As licensor, you and your transaction team should aim to produce the first draft
- By going first, you establish an anchor point for the evolving discussions and deliberations – representing a good psychological advantage
- Ensure that your legal counsel is fully aware of tangible and intangible factors pertinent to the deal
  - Maintain close contact with counsel at all times
  - Any specific issues that need to be carefully drafted – license grants, IP control, etc.
  - Be aware of any scheduling conflicts arising and communicate these to the other party in a timely fashion
- Do not lose touch with your key stakeholders internally
  - No need to brief executive management every step of the way – but keep your specialists on your side throughout

# Behavior Management: Principles

- Listen
- Question
- Summarize
- Build on common ground
- Build on the other party's ideas
- Summarize
- Emphasize agreement
- Describe your feelings
- Summarize

***Communicate!***

# Behavior during Legal Drafting Negotiations

- Explain and back up your position
  - Identify points of agreement with the other party – don't place too much emphasis on areas of disagreement at this stage
- Consider the response you will make to their best and worst reaction
  - “You'll have to do better than that”. Your response “Exactly how much better than that do I have to do?”
- Avoid contradiction
  - it creates confrontation and eventually leads to stalemate
- When the other party sets out their position forcefully, do not accept or reject it immediately
  - Probe for the interests underlying their position and explore how to address those interests
- “If we can do that for you, what can you do for us?”

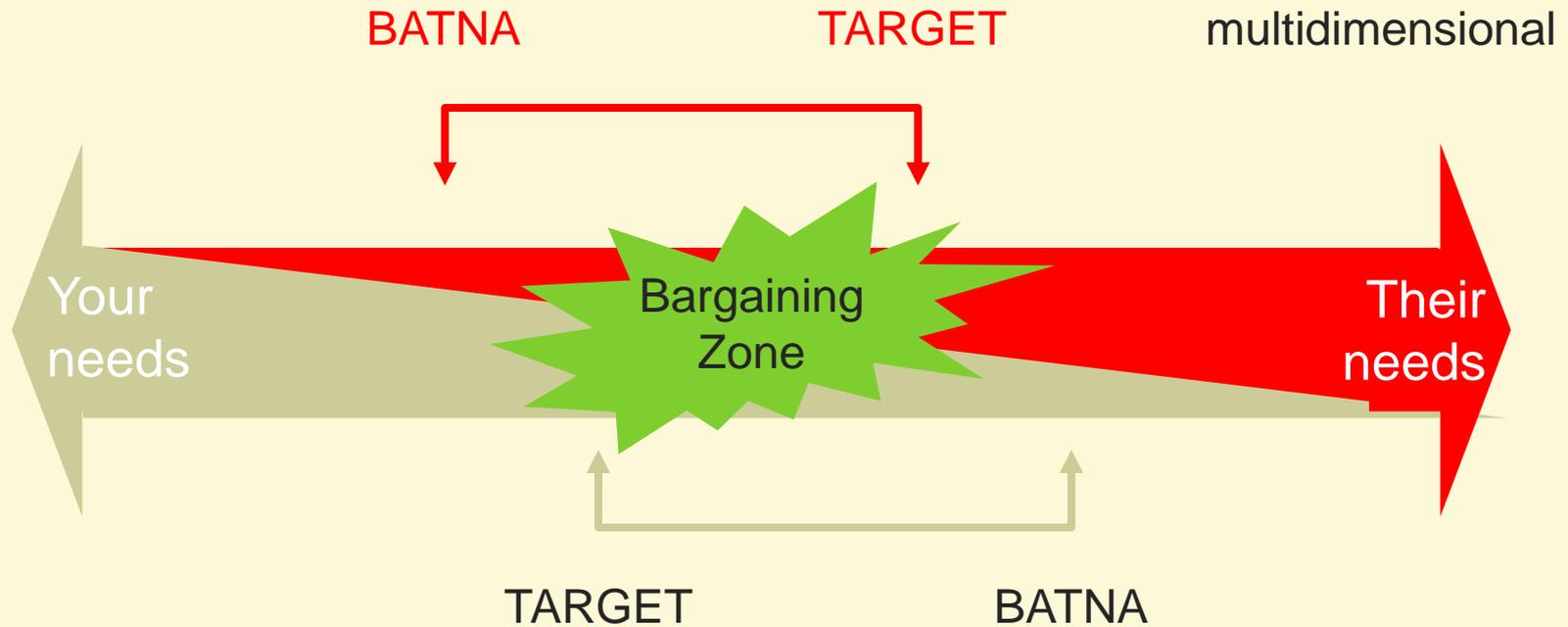
# Behavior during Legal Drafting Negotiations

- Ignore threats and ultimatums
  - These may appear to symbolize strength, but they are more often symptoms of weakness
  - In these situations, use delays or silences to counter their position
- Use “I feel”, “I felt”, “I found” to turn hostility around
- Be aware of body language at all times
  - Ensure your own team is attentive and interested
  - Make note of sudden responses from the other party (smiles, frowns, snorts)
- Maintain an atmosphere of co-operation and willingness to be reasonable

# Making Concessions

- Start high, concede slowly, and taper them
- Resist slipping into dividing the pie (distributive bargaining); strive for “integrative bargaining” to trade off between issues and make the pie bigger
- Be aware of your big and little issues. Make big moves on little issues, and little moves on big issues
- Continue to visualize your issues as a map
  - Deal with the entire package: no issue is closed until all associated issues have been decided
  - Seek compromise – “If you agree our requested FTE rate, we could consider rescheduling the first milestone”
- Focus on interests, not positions
  - Positions you will hear, underlying interests you’ll have dig hard to discover

# Keep your BATNA in Sight!



Remember: "We most prefer to say yes to the requests of someone we know and like"

# Use of Tactics in Negotiations

- Negotiations naturally and inevitably involve tactics
- Make sure you can distinguish a tactic from a “Dirty Trick”
  - A dirty trick is a tactic deliberately designed to mislead and/or break down the other party, leaving it with no options and/or preserving broader self-interests
- Everyone uses dirty tricks to some extent (sometimes even subconsciously!)
- You may call the intention of a dirty trick into question but focus instead on the behavior
- If used on you (e.g. included in the package), declare your disappointment using “I feel”, “I felt”, “I found” statements

# Examples of Tactics

- Many tactics can influence negotiation outcome
  - Anchoring – influence opinion by dropping a number as a reference point
  - Nudging – direct choices subconsciously, without forbidding any options
  - Authority – cite key opinion leaders, experts, boards of directors, etc. Can be a form of nudge
  - Risk aversion to loss

# Anchoring

- Anchoring on the offense
  - Set high goals prior to negotiation
  - Open with the best deal for you (highest or lowest number) to give a framework of reference
- Anchoring on the defense
  - Use a de-biasing strategy – think about the opposite perspective when a number is given
  - Ignore the details of the case at hand; seek market comparables
- Experience and information is the key to anchoring...  
how good is yours? How good is theirs?

# Nudging

- A nudge in the real world is easy to find... fruit at eye level and junk food hidden away, making something an active choice to achieve the non-ideal result (subscribing to a newsletter as the default).
- Setting up the milestones in a deal that you want so the other side only thinks to change the number - not the event that causes it
- Keep in mind that small and apparently insignificant details can have major impacts on people's behavior

# Authority

- An influence tactic that is used all the time
  - Citing or engaging an expert and referencing their qualifications
    - Though an expert can define what is fair and what isn't
  - Having reams of paper with data from key opinion leaders
  - Using the board of directors or the CEO as a smokescreen for refusing to compromise or delivering an ultimatum
  - Can lead the other side to neglect competitor information

# Risk of Loss

- Studies have shown that people are more risk-averse when they are contemplating gains
  - They will go for the higher chance of a gain
  - Or if they are told they have a high chance of losing a larger amount of money, they choose the 100% chance of losing the smaller amount of money rather than a small chance of losing nothing
  - They prefer surety for loss
- Result: give good news in chunks and bad news all at once
- Frame choices in terms of losses rather than gains

# Dealing with Derailed Negotiations

- Is the delay a one-off hitch in communication? Chronic slowness? Indication of a wider issue in the partner organization? Maneuvering for an advantage?
- An emerging pattern requires decisive action and an escalating response
  - If there is clear evidence of a cultural disconnect or pattern of “dirty tricks” emanating from the other side, broach the subject with the lead negotiator(s), preferably alone and definitely in private
- Determine whether the party is serious about doing a deal
  - Does the pattern of behavior in negotiations portend problems in a future partnership?
- Resume negotiations with mutually agreed provisos or “walk”, depending on the severity of the impasse, your response to it and your options

# “Walking Away” Is More Than a Tactic

- The primary objective of a negotiation is not to do a deal – it’s to advance one’s business through doing a deal
- Define internally the point at which a deal structure and/or partnership becomes a net, long-term loss
- Be clear throughout the negotiation about which terms are absolute “must haves” or “deal-breakers”
- If the negotiation fails, examine the extent to which the failure resulted from that specific partner
  - Or was there a weakness in the technology which needed to be overcome? Or were your objectives unrealistic at the outset?
- Sometimes a deal not done is the appropriate outcome

# Gaining Commitment

- When agreement has finally been reached, do not gloat over your victories nor brood over your defeats
- Continue to work cooperatively with the other party to build trust and manage the relationship
- Remain responsive to the timely identification of problems and negotiation of solutions
- Keep sight of the goal: to secure commitment. Signing the agreement is just a symbol of that commitment

# Closing: When? How?

## When

- All remaining gaps have narrowed
- Their concessions or yours have dried up
- You are at your target or limit
- Implementation questions start taking over
- Body language... Everyone is interested

## How

- Summarize and agree (eye contact, firm language)
- One last concession (if we agree to this then we have a deal)
- Make final offer – confer with your team, package it, firm delivery, pack up your papers, close your pen, and shut up after you say so
  - If they don't accept it and you still want to continue, break out with your team to discuss further options. Or sleep on it!
  - If they give it, did they leave a way out? Ignore the finality, break out with your team to discuss further options



# The Softer Side of Negotiation

Culture and Communication

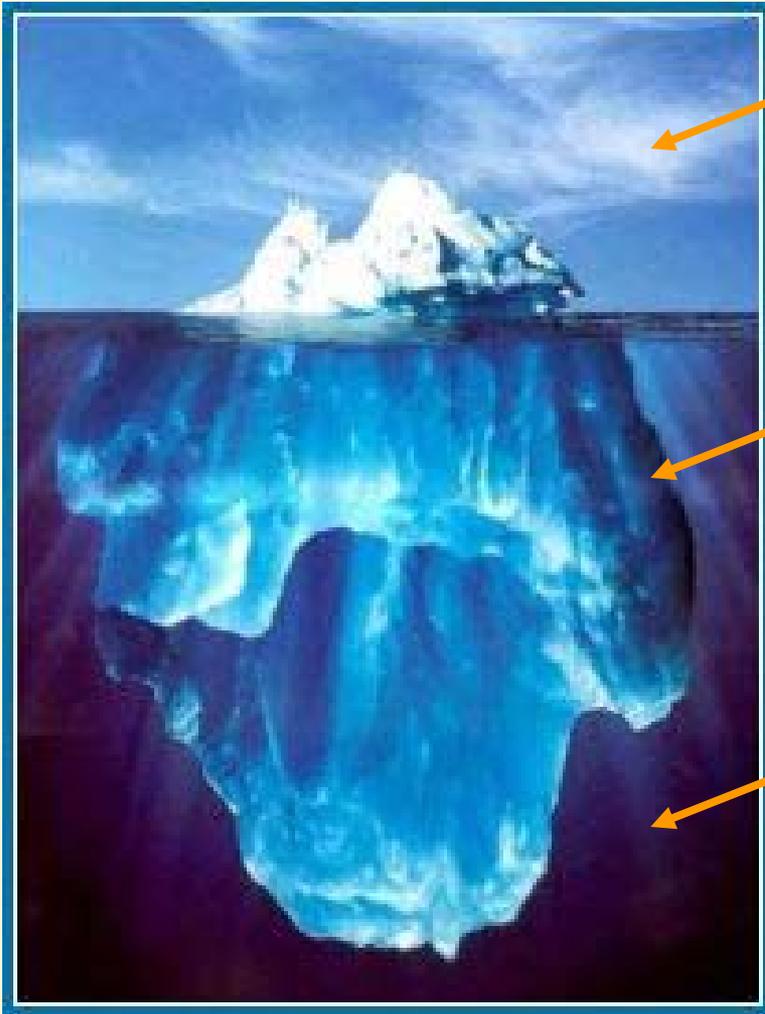
# The Global BD Environment

- Business opportunity does not exist in a vacuum
  - Organizations that accept and manage cross-cultural aspects of business are more likely to succeed
- Opportunity is colored by the unique combination of culture, beliefs, values, behavior and approach of the other party
  - As it relates to its business
  - As it relates to how that business is negotiated
- Accepting and aiming to understand the other party's differences is key to effective negotiation

# Universal Indicators of Influence

1. Reciprocity – You, then me, then you, then me...
  - Be the first to give (information, concession) during negotiation
2. Liking – Making friends to influence people
3. Consensus – People follow the lead of similar or like-minded people
4. Consistency - People fulfill written, public, voluntary commitments
5. Authority – People defer to experts who provide shortcuts to decisions
6. Scarcity – People value what is scarce

# Visualizing Cultural Understanding



## ■ Observable behavior

- Can learn overall tendencies, but likely to identify do's and don'ts
- May lead to superficial understanding

## ■ Shared values

- Requires inferences from observed behavior and learning about a culture
- More powerful, because values drive (partially) behavior

## ■ Shared assumptions

- Highly abstract – drive values, but are hard to determine
- Very powerful; enable true understanding of a culture

# Awareness of Cultural Differences

- Applies equally to sectors, companies, countries, and within teams
  - Language, values, expectations, philosophies
- Cultural understanding and fit is relevant to the nature of the deal being negotiated
  - e.g. Arms length license vs. merger

# Impact of Culture on Negotiation

## Contract-related

- |                             |           |   |              |
|-----------------------------|-----------|---|--------------|
| ■ <b>Goal</b>               | Contract  | ↔ | Relationship |
| ■ <b>Agreement Building</b> | Bottom Up | ↔ | Top Down     |
| ■ <b>Agreement Form</b>     | Specific  | ↔ | General      |

## Team-related

- |                            |            |   |           |
|----------------------------|------------|---|-----------|
| ■ <b>Team Organization</b> | One Leader | ↔ | Consensus |
| ■ <b>Communications</b>    | Direct     | ↔ | Indirect  |
| ■ <b>Time Sensitivity</b>  | High       | ↔ | Low       |

## Individual-related

- |                       |          |   |         |
|-----------------------|----------|---|---------|
| ■ <b>Attitudes</b>    | Win/Lose | ↔ | Win/Win |
| ■ <b>Risk Taking</b>  | High     | ↔ | Low     |
| ■ <b>Emotionalism</b> | High     | ↔ | Low     |



# Communication

Patterns, verbal and nonverbal

# Example of Communication Patterns

<i>Behavior</i>	<i>Japanese</i>	<i>American</i>	<i>Brazilian</i>
<b>Verbal Interruptions/ 10m</b>	12.6	10.3	28.6
<b>Silent periods &gt;10s/30m</b>	5.5	3.5	0
<b>Eye contact /10m</b>	1.3	3.3	5.3
<b>Touches/30m</b>	0	0	4.7

# Non-verbal Communication

- Be conscious of your own body language during negotiations
- Basic observations
  - Leaning away or arms crossed – unconvinced, not interested
  - Hands steepled – confidence
  - Hands together with thumbs up – positive thoughts
  - Crossed legs with jiggling feet – impatience, discomfort
  - Fiddling with objects – doubt, insecurity
- Remember that your emotions show on your face
- Be aware that some body language may simply reflect a lack of understanding

# Do As the Romans Do?

- Good advice when negotiating across cultural differences
  
- BUT...
  - Not all negotiators adapt effectively
  - Other party may be adapting at the same time!
  - Negotiation style may vary for internal and external communications
  
- SO...
  - Acknowledge cultural differences, agree to work through them
  - Moderate adaptation can be effective
  - “Brokers” to manage major cultural / language barriers

# Top Nine for Negotiating Across Cultures

**1. Prepare, prepare, prepare**

Don't be derailed by problems arising from things you should have known

**2. Avoid jargon, idioms and slang**

**3. A picture is worth a thousand words**

Support your case with instructive visuals

**4. Patience, patience, patience**

Especially where cultures do not see time as money

**5. Retain cultural neutrality**

Do not judge

**6. Think long-term**

Written agreement may be seen as just the start of the relationship

**7. Know thyself**

Recognise where your own preferences may lead to cultural stereotypes / prejudice

**8. Thou shalt not.....**

Comment on the other party's approach to and ethics of doing business, way of life, laws, religion, race, etc.

**9. Be prepared to say No**

Remember:

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**It all depends on you**

# Further reading

- Hendon, D. W., R. A. Hendon, and P. A. Herbig (1999). Cross-Cultural Business Negotiations. Praeger, Westport, CT.
- Fisher, R., and W. Ury with B. Patton (1991). Getting to Yes (Second Edition). Penguin Books, New York.
- Ury, W. (1993). Getting Past No: Negotiating Your Way From Confrontation to Cooperation (Revised Edition). Bantam Books, New York.
- Fortgang, R. S., D. A. Lax, and J. K. Sibenius (2003). Negotiating the Spirit of the Deal. Harvard Business Review 81, 66-75.
- Gerdes, S. (2003). Navigating the Partnership Maze: Creating Alliances that Work. McGraw-Hill, New York.
- Shell, G. Richard (2004). Bargaining for Advantage, 2<sup>nd</sup> Edition.
- Dawson, Roger (2000). Secrets of Power Negotiating.

# Data Rooms

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## ■ Online datarooms

- Merrill
- Intralinks
- Brainloop
- Bowne
- Project Fusion
- Pandesa
- RR Donnelley
- Box.com