

HOW TO SUCCESSFULLY NEGOTIATE A DISPUTE

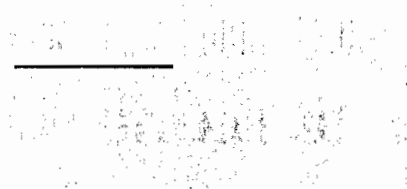
In one of our earlier columns, we discussed how a divorce agreement can be readily enforced in Thailand. But we focused on the fact that — whether in an emotionally charged dispute like divorce, or in any litigation or business transaction — an agreement between opposing sides will only be born of a successful negotiation.

An attorney develops negotiating techniques from experience in dealing with adversaries on a regular basis. In this article, we share some of these techniques that prove useful in divorce, dispute settlement or any business negotiation.

Realistic goals should be set. Before even contacting the other side, you should think seriously about what your opponent would agree to and use that to temper your own expectations. If your adversary does the same, you will have both taken a big step towards an agreement before you even begin.

Avoid overly aggressive behaviour. Some believe that an adversary will be intimidated if they negotiate aggressively. They try to corner the other side using their own words, or put pressure on their opponent, displaying visible signs of anger, disappointment or frustration. The other side is not your enemy — you should be trying to work together as a team. Aggressive behaviour will be deemed offensive, and it will effectively shut down all communications before the other side even has a chance to hear what you have to say.

Let the other side speak. Some believe that by dominating a discussion, they can win a negotiation. In point of fact, a wise person will allow the other side to speak as much as they want. Firstly, it gives the other side a sense of accomplishment to be able to vent all their arguments and points. Also, the more you learn about their position, the



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easier it is to find a mutual solution to any obstacle. And, if all else fails, knowing the other side's arguments will prove useful if litigation becomes unavoidable.

Respect your opponent. Respect and agree with your opponent as often as you can to encourage open dialogue. Do not grimace or make disparaging remarks when they raise arguments or points that you do not accept. Stress those points that you do agree upon whenever possible, no matter how basic. If the other side sees you as reasonable, they are more likely to soften their position over the long term.

Prove to them you have no options. In a game of chicken, two cars drive straight towards each other — the first one to back down and swerve out of the way is the loser. How do you ensure victory? You rip out the steering wheel and toss it out the window for your opponent to see. Once they see you no longer have the ability to turn, they will turn instead. By analogy, if you do not have the ability to meet the other side's demands for compromise, spend the time to prove this to them. If you can't pay, show them your bank statements, your debts. Once convinced, they will seek some alternative compromise.

Invest time and money in the process, leave the most difficult issues for last. In the face of difficult emotional disputes, such as determining which of two parents should have sole custody of a child, many clients will refrain from even attempting a settlement. They feel there is no point

in having any discussions with the other side if they disagree on such a fundamental issue. And yet, our offices have been successful in every case in reaching an agreement between parents who have approached us for mediation — even when child custody is disputed.

Sometimes it takes an outsider with negotiating skills to show the two sides how much they have in common by using all the techniques we have described above to bring the parties closer together.

The negotiator will also leave the most difficult issues for the end. Clients will question why they should spend time reaching a resolution on all the smaller points, when the bigger issues are likely to kill the deal anyway. They do not realise that during a successful negotiation process, parties will soften their positions. It may take more than one meeting, but inevitably a good negotiator will bring both sides closer to the middle. Once the two sides have expended time, money and effort to get that far, they do not want to see it all go to waste. They are driven by their own internal wish to complete a deal. Parties that had initially indicated an absolute unwillingness to compromise on a fundamental issue will suddenly open up to alternatives not previously considered.

Someone once said that a fair agreement is one in which both sides are unhappy because they both must compromise something. However, the converse is also true — that in a successfully negotiated settlement, there are no losers.

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