

Effective Negotiations within a Family Business

“The situation is hopeless.” ... (however)... “We must take the next step.”
Pablo Casals



“Go slow to go fast.”

Negotiations within family enterprises are usually emotional events. How could they be anything else? People are emotional. When we practice emotional responses to our parents or siblings, we are reinforcing neural patterns. Those “old stories” can prevent family members from effective decision-making. Family enterprises may need to explore using a better model for having these important, albeit it, difficult conversations.

The ZOPA Model

ZOPA is defined as the **Zone of Possible Agreements**. Think of the ZOPA as a list in the middle column, between two parties with non-negotiables, as further explained below:

My Non-Negotiables

ZOPA (Zone of Possible Agreements)

Another’s Non-Negotiables

—	—	—
—	—	—
—	—	—
—	—	—
—	—	—
—	—	—
—	—	—

Family enterprises typically struggle to achieve productive outcomes when dealing with complex issues such as succession, continuity, conflict, communication, ownership and asset transfers.

Column 1 – My Non-Negotiables:

These are what a member of a family business must hold true in the future. These are the easiest items to list because they reflect each family member’s core values. Examples may include career clarity, ownership, or asset management. ***If the item is important and negotiable, then you will add it to the “ZOPA” middle column.***

Column 3 – The Other Family Member’s Non-Negotiables:

Each family member should then seek to list the possible non-negotiables for the other family member(s) engaged in the negotiations. These items are more difficult to list because family members will have to make informed and educated guesses. Examples may include specific assets, operating business ownership interests, and needing validation of the other parties underlying motivations (drivers). Just like when playing poker, the participants are trying to guess what cards the other players have in their hands. **Again, if the item is not a firm non-negotiable for the other party (but important), then add it to the “ZOPA” middle column.**

List All the ZOPA’s (in Column 2):

Number them for reference and discussion. Examples may include: 1) working together as family enterprise owners; 2) dividing assets for/among specific owners; 3) distributing assets to the next generation; 4) amending the shareholder agreement’s buy/sell provisions regarding the transfer of assets within the family; 5) distributing some assets outside the family ownership; 6) defining phases of asset transfer; and 7) gifting ownership from the current generation to the next generation. *Try to list at least ten ZOPAs where possible.*

Next Steps

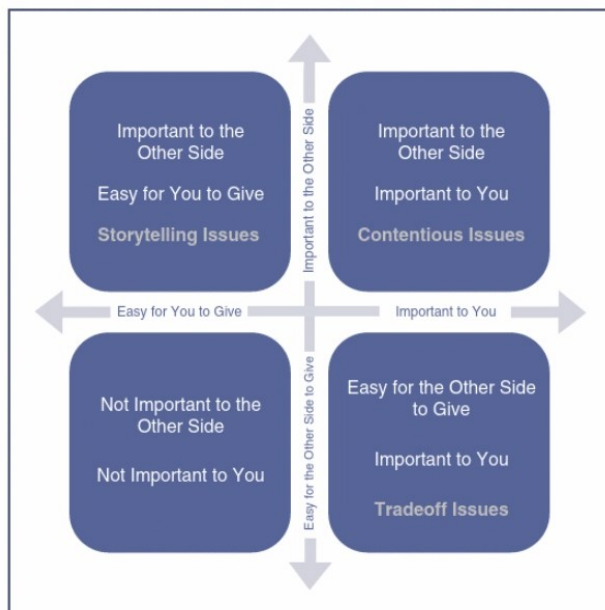
Following the discovery phase, it is recommended you use the ZOPA model as a tool to define alternatives, develop meeting agendas, and reduce conflicts among the different family enterprise members. A little structure goes a long way.

Putting the Right Issues on the Table

The discipline of generating a list of objectives and related negotiable issues is essential in all negotiations. Four objectives that commonly exist in negotiations with ongoing relationships are the following:

- Address the other side’s pressing needs (including any underlying objectives);
- Differentiate yourself and your specific objectives;
- Build the relationship with the other side;
- Maximise your own outcome(s).

You may have additional intentions in specific negotiations, but these four objectives persist across all negotiations where you want to maximise your outcome and build the relationship at the same time.



Issues Matrix

Once you have considered your objectives and developed a list of negotiable items, **you should lay out your issues on an “Issues Matrix” to ensure that you have the right issues on the table. The Issue Matrix considers the relative importance of each item to both parties.**

As you can see in the diagram above, the X-axis reveals what is important to you and the Y-axis focuses on what is important to the other side.

The figure shows four quadrants, **with the three “Issues” named quadrants, being the critical ones.** Consider the quadrant that is high on X and high on Y. These are items that are important to you and important to the other side. These are the **Contentious Issues** in the negotiation. For example, issues like price and payment terms will often be in this quadrant. You can never avoid Contentious Issues; they will exist in every negotiation. **However, you want to be certain that you do not only have Contentious Issues on the table, because these will be the most difficult to negotiate.**

If you only have Contentious Issues on the table, the discussion will likely be very heated and focus less on the other side’s needs. Moreover, if you only have Contentious Issues on the table, every concession you make will cost you a great deal because everything you are discussing is incredibly valuable to you.

The most important items to include in any negotiation are the issues that are in the quadrant that is high on Y and low on X; these are the **Storytelling Issues**, as shown in top left corner of the matrix. **These issues are important to the other side and easy, or not as costly, for you to provide. Perhaps you even want to do these things. Storytelling Issues allow you to claim more on the Contentious Issues and the Trade-off Issues.** Storytelling Issues also allow you to create a rationale for your offer that focuses on the other side and the other side’s interests. It is essential to focus your rationale on the other side rather than on yourself, and Storytelling Issues will allow you to do this.

Trade-off Issues are those that are important to you but less significant for the other side or not costly for them to provide. Trade-off Issues might be as important to you as some Contentious Issues. However, because they are less important to your counterpart than Contentious Issues, they are far easier to claim. You want to get more on Trade-off Issues as you give up some on Contentious Issues, or so you can give more on Storytelling Issues. If you do not put Storytelling Issues on the table, you have fewer trade-offs to use to claim Contentious Issues and Trade-off Issues.

You will notice that the fourth quadrant (low on X and low on Y) is not named. Issues that are not important to you or the other side are not very relevant in the negotiation. **It is suggested that you focus on the three critical quadrants as you build your plan for the negotiation.**

Some Tips on Using ZOPA

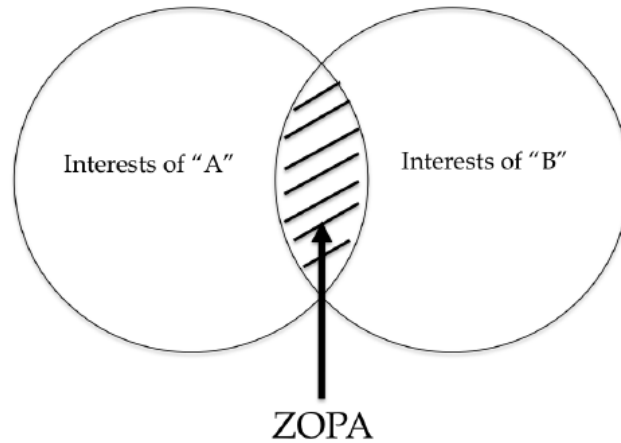
- a) **Listen**** When participating in discussions with family members, **listen actively for insights** into the other party’s non-negotiables. Look for behavioural clues (e.g., emotional outburst, volume increases, standing up). Ask lots of open-ended questions such as, *“I’m a little confused on this matter. Can you please tell me more about your thinking on*”. Many open-ended questions start with Who, What When, Where & How.
- b) **Structure** With complex emotional enterprises, **direct face-to-face meetings are preferred**, because they are usually more effective than virtual meetings.
- c) **Process** When having your discussions (**preferably facilitated**) write the ZOPAs together as they emerge on a shared listing for all to see. Use a whiteboard, flip chart, digital notes, or similar. **Use words like “Options”, “Possibilities”, or “Ideas” in the title to encourage broad possibilities and openness from all participants.** These ZOPAs can help to define agendas for future meetings. Determine which ZOPAs to focus on in the next meeting.

At a certain point, the family’s most essential issues often become clear. At that point, you can focus on particularly relevant ZOPAs, which will in turn define the next phase of discussions and agreement being reached. The session facilitator should share updated ZOPA notes at the end of each meeting for consistency and to ensure mutual understanding among the participants.

- d) **Validation** Openly expressed **validation of the other party’s cogent points can accelerate the ZOPA process.** One of the best motivators of pro-social human behaviour is validation, and people especially seek it during times of conflict.

Conclusion

In summary, the ZOPA model can be applied to emotionally complex negotiations and decision-making for many family enterprise leaders; ideally the process should be led by an experienced family business facilitator. It can be another option and a useful tool for members of a family enterprise to use to positively move forward with otherwise difficult and emotive issues, that are important to the success and continuity of the business.



Additional Resources

- For a copy of a useful summary diagram – **“Negotiation & BATNA**”** - please click [HERE](#). (** BATNA means Best Alternative to a Negotiated Agreement)
- For a copy of a **“Negotiation Summary”** diagram - please click [HERE](#),
- And for a **“Developing BATNA Checklist”** - please click [HERE](#).

** Listening:

*“We never seem to do it enough, in private and public discourse, online and in person. Don’t like acknowledging inconvenient other truths; constantly talking over the other, in our modern-day Tower of Babel, that toxic stew of fury, scorn and righteousness. But there is grace in listening. **“When people talk, listen completely,”** Ernest Hemingway said, **“Most people never listen.”** From listening comes understanding; it’s generous and respectful. **Someone once pertinently said: the word “listen” has the same letters as the word “silent”.** The takeaway from any work of art that reverberates is emotion, how it made us feel, and so it is with listening”.*

Nikki Gemmell – “Hear Hear” - The Weekend Australian, 25th March 2023

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