

Minerals Contract Negotiation

Role Play

Review and Lessons Learned

March 15, 2013

ROLE PLAY: Minerals Contract Negotiation

Review

GROUP 1: Tongolia 1 Wannabe 1

GROUP 2: Tongolia 2 Wannabe 2

GROUP 3: Tongolia 3 Wannabe 3

GROUP 4: Tongolia 4 Wannabe 4

CIVIL SOCIETY GROUP (CSO) Meetings w/Groups 1 & 3

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March 13, 2013 Schedule

Time	Govn't/Company	CSO
10-11:30	Appoint Team Positions Review Term Sheet Prepare Negotiation Issues	Appoint team positions/Compile Strategy/Prepare Questions
10:30		Commence Govn't/Company mtgs
11:30-1:00	Conduct Negotiation Meeting 1	Identify Issues/Prepare Press Release
1-2:00	LUNCH	LUNCH
2:00-4:45	Conduct Negotiation Meeting 2 Prepare Final Term Sheet	Share Press Release TV Interviews Prepare Final Presentation

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Review: Where were Negotiations Conducted ?

LOCATION	Group 1	Group 2	Group 3	Group 4
Preparation	T1-ConfRoom Back Left	T2-Middle of Conf Room	T3-Cafeteria under Window	T4-Middle of Conf Room
	W1-ConfRoom Back Right	W2-Cafeteria against wall	W3-Conf Room Front	W4-Separate Room behind reception
Negotiations	SEPARATE ROOM BY CAFETERIA	SEPARATE ROOM BY CAFETERIA	W3 PREPARATION SPACE	SAME ROOM AS W4 PREPARATION

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Observations about where **Preparation for Negotiations** were conducted

- 1. Main Conference Room** (*chance to be overheard?*)
 - a. Middle (2)
 - b. Front
 - c. Back Left
 - d. Back Right

- 2. Cafeteria** (*hot? Poor acoustics? Traffic?*)
 - a. Against wall
 - b. Under window

- 3. Separate Room** (*well done!*)

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Observations about where **Negotiations** were conducted

- 1.T1** *immediately* secured air conditioned room by cafeteria (“*comfort*”)
- 2.W 2** directed negotiations into air conditioned room by cafeteria (“*fortunate default*”)
- 3.W3** remained in preparation location (“*laissez faire*”)
- 4. T4** presumption that its separate preparation location would continue to be used (“*home advantage*”)

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Review: **Who** Conducted the Negotiations?

PARTIES	Group 1	Group 2	Group 3	Group 4
TONGOLIA	Team Coordinator PM Advisor Sr. Mines Officer Legal Advisor Min of Environmt	Atty Gen Off Explor/Geolog Min of Nat Res Min of For Aff Environ. Advisor Finance Advisor	Atty Gen Off Min For Affs Min Finance PM Office Min Nat Res	Atty Gen Office Min Dept Lawyer Tech Advisor PM Chief of Staff Crown Prince
WANNABE	Economist/Geolog Legal Advisor Mines Officer Geologist/Tech Community Dev	Company Pres. Legal Advisor Financial Adv Environmt Adv Secretary Media Spokesp	Team Lead 3 Directors Daughter of Owner!	Team Lead Legal Advisor Subsidiary Dirs: - Tongolia - North America - South America - Africa

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Observations about who conducted the Negotiations

1. Legal
2. Mining/Geologist
3. Finance/Economist
4. Environment/Natural Resources
5. Community Development
6. Company Directors
7. Crown Prince
8. Prime Minister's Office

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Whom Should/Does Conduct the Negotiation

Technical Specialists (Both Parties)	On behalf of Company	On behalf of Government
Mining, Tax Lawyers	Company mgmt (not usually the mine management) In-house and outside advisors	Ministry of Mines Ministry of Finance Ministry of Foreign Affairs State Mine Company Outside advisors
Mineral Economist		
Engineer, Geologist		
Environmental		
Social responsibility		

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Logistics: General Observations

- | | |
|----------------------------|------------------------------|
| 1. Introductions | Tea, flight, “hello” |
| 2. Minutes | W2 followed by T2 |
| 3. Development of Schedule | W2 |
| 4. <i>Use of Schedule</i> | ??? |
| 5. Due Diligence Sheet | T3 |
| 6. Use of “breaks” | T1 and W1 |
| 7. CSO Consultations | T1 initiated
W2 requested |
| 8. Typed Term Sheet | W2 |

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Approaches to Negotiations: General Observations

Description	Example
<i>Matter of Fact</i>	“This is standard industry practice”
<i>Reiteration</i>	Repetition and modification, repetition...
<i>Empathy</i>	“I want to agree but the Board/Government says”
<i>Polite</i>	“Sorry, but we cannot accept that”
<i>Off-Kilter</i>	Good guy/Bad guy
<i>Threatening</i>	“We’ve spoken to the CSOs and told them”
<i>Hard-line</i>	Adamant, “showstopper”, not possible
<i>Avoidance</i>	“We’ll have to get back to you”

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General Observations

- | | |
|-----------------------------------|-------------------------|
| 1. Language | “I”, “we”, “us” |
| 2. Seating arrangements | Circle/directly across |
| 3. Introduction of Company | Too late by negotiation |
| 4. Use of the Term Sheet | Term by Term |
| 5. Use of Advisors | During Preparation |
| 6. Use of Honest Broker | Only Group 1 |

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Lessons Learned?: General Observations

1. Preparation matters
2. Location matters
3. Schedule matters
4. Members of the Team matter
5. Respect matters
6. *Key Terms* prevail over *All Terms*
7. It's **NOT** personal

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Concluding Observations

- Amazing individual, team and group effort
- Powerful results in less than a day
- Good negotiation does not equal debate
- Identification of key issues will focus the negotiation
- All working to same level; let's raise the bar
- Be prepared to walk away

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SAMPLE Term Sheet: General Observations

1. All Teams went line by line (*“all trees, no forest”*).
2. No team requested extension of deadline (*opportunity lost*).
3. One Team “officially signed” the Term Sheet (*details*).
4. Mining fiscal regime may be more deeply studied (*knowledge is power*).

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Role Play: General Observations

1. A useful tool to better understand another party's situation.
2. Requires understanding self, your team and the other team.
3. A tool that may be used for a variety of DSM training.

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What was the General Purpose of the Negotiation?

Was it to....

provide an opportunity for the Parties to identify and finalize how specific issues will be addressed , ensure clarity of mutual understanding, and to secure optimal benefit from the Minerals Contract?

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Was the Optimal Objective of Negotiation Achieved?

To provide both Parties with *a fair deal* that balances both interests and provides predictability but is sufficiently flexible to adopt to reasonably changed circumstances during the life of the contract for mutual benefit.



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Be Prepared and Good Luck!