

RENEGOTIATION

"Life struggling against form"

1. Types of renegotiation

- a. Post-deal: takes place at the expiration of a contract
- b. Intra-deal: takes place while the agreement is in force, according to predefined conditions
- c. Extra-deal: takes place in the absence of a specific clause authorizing such a renegotiation, due to:
 - * imperfections in the agreement
 - * changed circumstances

2. Differences between initial negotiation and renegotiation

- a. The parties know much more about each other than when they first negotiated
- b. Many of the questions that the parties had initially about their contemplated transaction have been answered in the meantime
- c. As a result of the investment in the initial transaction, the cost of refusing to renegotiate is higher than the one of walking away initially

Extra-deal renegotiation: Good practices

* Preventive / preparatory measures

- Recognize that a signed contract does not necessarily create a relationship → take care of the relationship continuously
- Don't rush initial negotiations: building a relationship takes time
- Organize up-front the intra-deal renegotiation process: define in the initial agreement when and how renegotiation may take place (structured review process, dispute resolution clause, etc.)

* Renegotiation rules

- Resist the temptation to make belligerent or moralistic responses to a demand for renegotiation, but seek to understand the basis of the demand
- Evaluate the benefits of a legal proceeding against the benefits of a future relationship
- Look for ways to create value in the renegotiation
- Evaluate realistically the BATNAs on both sides
- Involve, either directly or indirectly, all necessary parties in the renegotiation
- Design the right forum and process for the renegotiation
- Involve the right mediator in the renegotiation process

Source: Jeswald W. Salacuse, *Renegotiating Existing Agreements – How to Deal with "Life Struggling Against Form"*, Negotiation Journal, Vol. 17, Number 4 (October 2001)