The Oxford Policy Fellowship

Negotiating with foreign investors

Tips from the Oxford Policy Fellowship's experience[1]

Governments of low- and middle-income countries are often faced with negotiations that seem lopsided: rich, international investors, armed with a team of expensive lawyers and seemingly infinite resources, up against government departments with stretched financial and human resources. To address this asymmetry, this article compiles some negotiation tips based on experience from the Fellowship's community of practice.

1. **Do not underestimate the importance of preparation.** Successfully conducting a negotiation takes extensive preparation – usually months in advance. Often, a lack of communication and cohesion between government ministries and departments results in situations where people arrive at negotiations inadequately prepared. Less scrupulous investors may arrive unannounced, pressuring government to 'sign an agreement' within days. Governments should resist these tactics, and allow time to determine their unified negotiating position in advance. The negotiation strategy should include which points are deal breakers, and where the government can compromise.

2. **Negotiate as an informed partner.** Resource-stretched governments may tend to rely on information produced by the counterpart – for example, valuations and business plans. Such documents can be hugely costly and time-consuming to procure, and investors capitalise on this by providing their own documents and creating time pressure. However, such information is not 'objective' and should be cross-checked as much as possible. The upfront cost of this will be offset by the rewards of a stronger, more informed negotiating position. A government should ask itself: if the project is not enough of a priority to justify such expenditure, is it worth entering into negotiations?

3. **Understand your counterpart.** It's crucial to understand the investor itself, as well as its proposition. Is this someone the government should welcome to operate in the country? Governments should look into their financial capacity, experience, and technical expertise, as well as their track record in implementing projects: how do they interact with local communities? Do their projects lead to development benefits for their host countries? A common tactic employed by investors is to secure commitments from the government well in advance of being in a position to implement their own commitments (for example, they have not yet secured funding for the project).

4. **Compile an effective negotiating team.** Ensuring that the right people are around the table will allow for an effective negotiating strategy. This requires advance planning and consultation with colleagues in other ministries or departments. It is important to get everyone on board with the strategy: discussions about which objectives to prioritise need to take place before speaking to the investor. If an investor sees an opportunity to negotiate with one 'friendly' government body separately, it may push to sign one of the project documents with this department and use this as leverage in negotiations for other documents. If the government is united and communicating, this cannot happen.

5. **Agree the rules of engagement.** It's also important to agree how the negotiation will be conducted: an effective strategy to minimise the investor's ability to pick up any internal

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disagreements is for the lead negotiator to have exclusive right to speak. Alternatives include employing a ‘good cop/bad cop’ approach, whereby certain members of the negotiating party behave more cooperatively, while others put up more resistance. Lawyers, who have licence to be ‘difficult’, can be useful here. Whatever the chosen strategy, it needs to be communicated and followed by all members of the team.

6. **Focus on the long term.** Investors like to focus on a deal’s short-term consequences. In protracted negotiations, it can be tempting to pay less attention to contract provisions that assume a far-off ‘worst case scenario’ – particularly when the investor seems trustworthy or promises great things in the short term. Project agreements commonly have long durations, and long-term implications need to be fully thought through. If the relationship breaks down, can government withdraw? It’s important to consider the worst case scenario as a real possibility and ensure adequate protection for the government.

7. **Understand the personalities in the room.** Experienced negotiators will observe and take advantage of the personalities of their counterparts. Despite representing the investor, the negotiators will have their own pressure points. Identifying these can be a huge advantage. Similarly, not allowing the counterpart to exploit individual pressure points on the government side, by presenting a solidified front, is important. Whilst you should always remain professional, don’t neglect the positive impact you can have by building a personal rapport and reacting with empathy.

8. **Control the rhythm.** When negotiations start to drag or get tense, resolve can weaken. Calling for a break can be a good tactic to create space. Equally, if time is needed to prepare a counter-argument, an adjournment can be called. As already noted, investors frequently put pressure on governments to conclude deals quickly – a tactic reinforced by booking short visits to ‘sign the contract’. Governments shouldn’t be swayed by these tactics, and should take things at their own pace. Properly negotiated, balanced deals can take months and even years of negotiations.

9. **Be prepared to walk away.** A common attitude is that ‘any investment is good investment’, which can lead governments to accept unbeneficial negotiation outcomes. It is important to bear in mind that negotiation is a two (or more) way bargain – the government has something that the investor wants, which is what brings them to the table. Investors like to take advantage of their position of strength, threatening to walk away if the government doesn’t concede a point. If the position is something the government cannot agree to, it should be prepared to walk away from the negotiations.

10. **The negotiation post-mortem:** Once negotiations are over, it is important to reflect on the negotiation process and then look to the future. Discuss what went well and what could be improved. If feasible, consider offering negotiation training for your team. Ultimately, the particular deal will survive your team and current policy, and so long-term preparation can help lay solid foundations for building your overall negotiating capacity.

Where there is political consensus, these tactics can help redress imbalance and get governments a better deal from negotiations with foreign investors. Inevitably, some deals will be fast-tracked or pushed through for political reasons. While the above negotiation tips cannot overcome such obstacles alone, presenting decision makers with a coherent strategy for success can be a persuasive tactic for combating haphazard negotiations.

