

Analysis of Conflict Management and Dispute Resolution Methods in the Process of Contract Management

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Abstract

Conflicts and disputes are ubiquitous in the contract management process of the project, and accurately identifying the types of conflicts and disputes is the premise for PMs to choose the correct solution. Also, mastering and distinguishing different dispute settlement skills can effectively optimize contract management. Thus, this paper adopts the methods of literature review and qualitative analysis to analyze the techniques of conflict management and dispute resolution. On the one hand, this paper critically analyzes the main methods to solve conflicts in contract management, and compares, contrasts, and analyzes the dispute resolution methods of contract management from different angles, providing PMs with a reference to solve issues of contracts. On the other hand, it evaluates the application of principle negotiation in international negotiation and the four basic principles used in international business negotiation, which provides PMs with skills in international negotiation.

Keywords

Conflict Management; Dispute Resolution; Contract Management.

1. Introduction

This essay is divided into three main parts. The first section is to discuss how project managers manage conflict and resolve disputes on projects. Next, Comparing and contrasting the dispute resolution techniques included in standard forms of commercial contract. Finally, this article evaluates the application of principled negotiation in international negotiation.

2. Conflict Management and Disputes Resolutions on Projects

2.1. Definitions

2.1.1. Conflict

Rahim (2012) defines the term of conflict as an interactive process manifested in incompatibility, disagreement or dissonance within or between social entities. He also notes that a conflict can occur between individuals, groups and organizations, which involves violence, interpersonal discord conflict. Compared with Mary Parker-Follett whose study shows conflict consists of functional and dysfunctional conflict stemming in the allocation of scarce resources and conflict is inevitable as organisations seek to redistribute scarce resources. Therefore, Conflict can be defined as an expressed struggle between at least two interdependent parties who perceive incompatible goals, scarce rewards, and interference from the other parties in achieving their goal (Hoker and Wilmot, 1985).

2.1.2. Dispute

Conflict can turn into dispute when conflict generates negative impacts on organizations (Lu, Zhang and Pan, 2015). As Mary Parker-Follett's view that conflict including two types, one is functional conflict which works toward the goals of an organization or group, another is called

dysfunctional conflict which blocks an organization or group from reaching its goals, dispute can be seen as dysfunctional conflict.

2.2. Conflict Management and Dispute Resolution on Projects

ISDP shows that project management is a complex process which includes various activities Kuenne, R. (1989) states that conflict is inevitable in an organization. Besides, Friedman et al. (2000) examines that different conflict management measures applied by employees in an organization may have different impacts on the level of people's conflict and pressure, their performance and their work environment shaping. Therefore, project managers should be equipped with knowledge and skills to manage conflict problems and resolve disputes to save time and cost, which can lead to a more productive organization and potentially increase the possibility of success of projects.

2.2.1. Conflict Management

Blake and Mouton (1964) present the styles of handling interpersonal conflicts in five modes: withdraw, force, compromise, smooth, and problem-solving. Similarly, Rahim (2011) creates a meta-model for managing conflicts as dominating, avoiding, compromising, integrating and obliging. Kerzner (2001) also presents five modes in project management conflict resolution are explained and the situations when they are best utilized are identified. These modes are Confronting, Compromising, Smoothing, Forcing, and Avoiding. Compared and combined the above three peers' research, the ways of conflict management are presented in details as the following which may help project managers (PMs) manage conflicts on projects.

Avoiding

Avoiding style is to defuse a conflict by avoiding a problem situation. To avoid the escalation from normal conflict into dispute such as risk management and contractual arrangements. The negative conflict management method is more effective in addressing less urgent problems. It is a temporary solution because conflicts can continue to reoccur.

Compromising

Compromising follows 'give-and-take' principle whereby both parties bargain to make a mutually acceptable settlement (Rahim, 2002). This means that each party gets their interests satisfied to a degree if the compromise is successful.

Smoothing

Smoothing is associated with attempting to minimize the differences and emphasize on the commonalities to satisfy the demands of the other party. In this approach, the areas of agreement are highlighted and the areas of disagreement are downplayed. Conflicts are not always resolved in the smoothing mode. A party may sacrifice its own concerns or goals to meet the counterparts of the other party.

Forcing

Forcing is one party goes all out to win his or her objective, as a result, often ignores the needs and expectations of the other party. It is more likely to have a tendency for a forced conflict as the intensity of a conflict increases.

Confronting

Confronting/problem solving/ integrating involves the parties meeting face-to-face and collaborating to reach an agreement satisfying both parties. This style involves open and direct communication which should lead the way to solving the problem.

2.2.2. Dispute Resolution

If a conflict becomes a dispute, it is significant to manage it positively and PMs should actively seek an effective settlement. Dispute resolution includes any process which can bring about the conclusion of a dispute, its techniques generally include Negotiation, Mediation, Arbitration,

Neutral evaluation, Expert Determination Adjudication and Litigation. The details are as the following.

Negotiation

Negotiation is by far the most common form of dispute resolution because it is the most efficient form in terms of management time, costs and preservation of relationships. Therefore, It can be seen as the preferred route in most disputes. There are two types of negotiation one is dispute negotiation which focuses on resolving past facts, another is transaction negotiation which focuses on reaching agreement for the future. in the process of both the parties themselves attempt to settle their differences using a range of techniques from concession and compromise to coerce and confront.

Mediation

Mediation is a way of settling disputes in which a third party, known as a mediator who arranges a meeting and assists both sides to reach an agreement that each considers acceptable. Mediation can be 'evaluative', where the mediator gives an assessment of the legal strength of a case, or 'facilitative', where the mediator concentrates on assisting the parties to define the issues. When a mediation is successful and an agreement is reached, it is written down and forms a legally binding contract, unless the parties state otherwise.

Arbitration

Arbitration is governed by statute, principally the Arbitration Act 1996, and it is a formal, private and binding process. Using this technique disputes are resolved by an award of independent tribunal. The tribunal is either agreed by the parties or nominated by a further independent body such as a court, which gives the widest discretion to the parties to decide between themselves how their dispute is to be resolved but provides a fall-back position if agreement cannot be reached.

Neutral evaluation

Neutral evaluation is a private and non-binding technique. Each side submits an outline of their case with an indication of what evidence they would be able to produce at trial. Then a third party neutral gives an opinion on the likely outcomes at trial as a basis for settlement or for further negotiation. The aim is to test the strength of the legal points in the case. It can be particularly useful where the dispute turns on a point of law.

Expert Determination

Expert determination is that the parties agree to be bound by the decision of an expert (not as an arbitrator) in the field of dispute, which is useful for a technical matter. The expert makes a decision on own expertise and investigations which is not in control of procedure, and must comply with the terms of the underlying contract from which authority is derived.

Adjudication

Adjudication is applied for resolving disputes under the Housing Grants, Construction and Regeneration Act 1996 (HGCR), which must include a provision for adjudication with the adjudicator to be acting as expert and not as arbitrator. This person give a decision within 28 days and the decision is binding until a final determination reached by settlement.

Litigation

Litigation is a formal process whereby claims are taken through court and conducted in public. If the use of a consensual process is not provided for in the contract and cannot otherwise be agreed, the only alternative is litigation. Parties often agree a settlement before the case comes to court but in some cases not until months or even years of effort have been spent on expensive preparatory work.

3. Comparison and Contrast of the Dispute Resolutions

Based on the Dispute Resolution Guidance of Office of Government Commerce, Comparing and contrasting adjudication, arbitration, mediation and litigation in the areas of cost, confidentiality, relationships, control and choice, formality, speed, flexibility and solutions as the Table 1 shows:

Table 1. The comparison of four key dispute resolution techniques

techniques areas	Mediation	Adjudication	Arbitration	Litigation
Formality	Informal	Informal	Between mediation and litigation	Formal
Speed	No more than one day	Maximum time from 35 days to 49 days	Protracting frequently	Slow
Flexibility	Flexible	Flexible	Flexible	Inflexible
Cost	The cheapest	Inexpensive	Reducing part cost	Expensive
Confidentiality	Confidential	Confidential	Confidential	Non-confidential
Relationships	Non-adversarial	Can avoid the dysfunctional	Adversarial	Adversarial
Control and choice	The parties	Adjudicator	Arbitrator	Lawyers and the judge
Solutions	Creative	Is restricted by legal remedies but allow promote solutions	Be limited to legal remedies	Enforceable without further agreement

Analyzing

According to this table, Litigation is the most formal type with strictly rules among these techniques. However, both mediation and adjudication are informal processes, and the formality of arbitration is more formal than mediation but less formal than litigation. Litigation’s solution is also the most enforceable without further agreement in contrast to the most creative solutions of mediation. Besides , the three aspects , namely, flexibility, cost, and confidentiality of litigation is attributed to be inflexible, costly, and transparent, whereas the other three is on the contrary. Therefore, litigation is potentially lengthy and costly; its adversarial process likely to damage business relationships; the outcome is in the hands of a third party, the judge. Mediation is the most time-saving, the cheapest and the most flexible process, and the non-adversarial make it to be applied commonly in commercial cases. The only different area of the four is the control and the choice.

4. Evaluate the Use of Principled Negotiation in International Negotiation

Principled negotiation, also called Harvard negotiation, namely if the interests of both parties are irreconcilable, it is necessary to persuade the other party to use some objective and fair criteria to make the other party accept this condition without feeling adverse or condescending, so as to achieve a fair solution through negotiation. It includes four basic principles as people, interests, options and criteria (Jung, 1981).

The four cardinal principles applied in international negotiation for international business negotiation process benefit each party and help seek business opportunities. Taking China for

instance, the state adopts a national strategy of "going out" facing the tendency of global economic integration, so understanding the characteristics of the internationally accepted principled negotiations would lead the nation and enterprises better into the international community when the state and enterprises facing disputes and conflicts of various interests.

People

Considering each other's emotion and avoiding hurting feelings in international business negotiations. because the negotiators are in more complex negotiations, background, different languages, political system, cultural tradition and laws. This will bring the two sides obstacles and difficulties, such as both sides will be cautious and tension, and even easy to cause anger over the other party.

Interests

Only by being good at discovering the common interests behind the interests can both sides break through the difficulties of negotiation and achieve the success of negotiation. This is because all parties in negotiations tend to attach too much importance to their own interests and positions, which is detrimental to discover and discuss the real interests behind positions.

Options

In the negotiation, parties should dare to break through the rigid mode of interest distribution and propose new alternative solutions, because the win-win goal of the negotiation is a process of cooperation. The opponent as a partner is to break through the traditional mode of interest distribution and jointly find new alternative solutions among nations.

Criteria

In international business negotiations, the use of objective standards can play an important role when the two sides disagree on a certain interest issue and do not compromise.

5. Conclusion

To conclude, this article has addressed the required three questions as a whole. Project managers can manage conflict on projects by five mode and the six techniques can be used to resolve disputes, in which four key modes has been compared and contrasted. This report also has evaluated the application of principled negotiation by four dimensions in international negotiation, which can help PMs efficiently and effectively address problems arising in the process of managing contracts.

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