

## CHECKLIST DEAL MEDIATION VS. DISPUTE MEDIATION

Deal-facilitation could be described as ‘mediation without a dispute’, however the practice is more complex. A deal-facilitation basically employs the same techniques and methods as dispute mediation, but generally the role of the deal-facilitator is more pro-active, and the order of employment of the interventions and techniques is different. Also the prime intentions for employing the process differ. In mediation the objective is to settle a dispute by finding a solution that is based on interests. Deal-facilitation is used preventive and pro-active. The objective is to reach a lasting mutual gain deal that is based on interests.

	DEAL-FACILITATION	(DISPUTE) MEDIATION
	<b>Making and saving a deal</b>	<b>Dispute settlement</b>
<b>Techniques, style and approach of the process by the neutral</b>	<p>A deal facilitation basically employs the same techniques as dispute mediation but generally involves a more proactive role on the part of the facilitator, and the order of the employment of skills can be different:</p> <ul style="list-style-type: none"> <li>• ZOPA discussions as well as</li> <li>• development of objective criteria and</li> <li>• exploring BATNA, WATNA and RATNA</li> </ul> <p>are important in an early stage of the negotiation. In deal facilitation, even if the parties are negotiating positionally, this tends to be more consciously tactical than in disputes, because the positions are usually not so entrenched. Parties in deals are usually more open to discussing options earlier on in the process (at least privately). Usually, the emotions are less aggressive in deals than in disputes.</p>	<p>ZOPA-exploration etc. is usually done at a late stage in a dispute mediation. It’s important to thoroughly explore interests and to deal with emotions before asking the parties to focus on settlement ranges or talking about options for a solution. This is because in disputes, the parties usually have much more entrenched positional convictions which all too often have obliterated the interests. Moreover emotions usually play a more prominent role and need to be dealt with before focusing on the content.</p>
<b>Uncovering hidden agenda’s and getting the real issues on the table</b>	<p>No dispute, therefore no open hostility, parties appear to be more friendly than they really are. Actually each wants part of what the other has got. In a deal context, differences are often re-interpreted and re-positioned. There is generally more posturing, more phony reasons, more hidden agendas and more false assertions than in disputes.</p>	<p>A dispute has occurred. Therefore distrust, and hostility are crystallized and more or less obvious. In a dispute setting, parties are more open about their differences.</p>
<b>Options and alternatives</b>	<p>Parties to a deal usually have a broader range of options and alternatives than those in a dispute. Parties to a deal can often either not do the deal at all, or do it with someone else - maybe many others.</p>	<p>In a dispute the choice is often limited to: litigate, let it be or settle. Therefore the options and alternatives are limited. In a dispute mediation ‘the deal’ does not take place in a ‘competitive market’.</p>

<p><b>Reactive devaluation</b></p>	<p>Reactive devaluation can be over-emphasized; in a negotiation it is often much more obvious and easier to deal with than in a dispute.</p>	<p>Reactive devaluation plays a more important role (i.e. one party is more likely to reject a proposal from the counterparty merely because it was the counterparty who proposed it).</p>
<p><b>Overconfidence, ego-defense and anchoring</b></p>	<p>People tend to overvalue what they are selling/offering and undervalue what they are buying/receiving. Deal-Facilitators need to see through this and reality testing and BATNA/WATNA-analysis is even more important than in dispute settlement. Moreover careful placing of anchors is very important.<sup>1</sup></p>	<p>In a dispute anchors are quite often already placed, moreover people under stress are usually more sensitive to the effect of anchoring (and other psychological processes).</p>
<p><b>Process and structure</b></p>	<p>The deal-facilitator is a third party that is regarded by the parties as being sufficiently neutral and impartial for their purposes. No regularization, total freedom and flexibility for the parties to shape their own process. The objective of the process is to pre-empt problems and to reach a lasting mutual gain deal based on interests.</p>	<p>A mediator is a neutral and impartial third party who is bound by a code of conduct, mediation rules and often disciplinary rules or a complaint scheme. The purpose of the process is to solve a dispute and to find a mutual gain solution based on interests.</p>

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<sup>1</sup> Avoid 'unwanted' anchors to be introduced in a too early stage as a reference. To avoid this you could make sure more than one alternative is introduced at the same time. A deal-facilitator can also use anchoring by consciously (making somebody) introduce an anchor that lies within or is near ZOPA. Besides this, a deal-facilitator can also explain the effect of anchoring to the negotiators in order to bring them to (be the first to) put a proposal on the table.