

Cost-Benefit Analysis Tool

The following worksheet may be used to assess the costs associated with succeeding at litigation or hearing on an issue-by-issue basis or to assess the relative merit of considering a different form of dispute resolution for the dispute as a whole.

Apply the chart below to either each issue, or the dispute as a whole. Fill in the cells with the estimated costs associated and refer to the explanations below.

ISSUE(S) ¹							
Cost Factors →	Internal Resources ²	External Resources ³	Lost Opportunity ⁴	Time Value Of Money ⁵	Other ⁶	Chance Of Success ⁷	Total
Batna							
Watna							
Facilitation							
Mediation							
Arbitration							
Hearing / Litigation							

Issues - Looking at the dispute as a whole, determine if it can be divided into separate issues and if such issue can be quantified, is the general description of the dispute. It is made up of different parts such as, allocation of field costs, allocation of engineering costs. Based upon the total amount in dispute, attempt to allocate a number to each issue and to apply the appropriate risk factor applicable to that issue.

Consider your BATNA (Best Alternative to a Negotiated Agreement) & WATNA (Worst Alternative to a Negotiated Agreement) as their costs are usually beneficial in making decision:

BATNA (Best Alternative to a Negotiated Agreement) - Negotiations are usually entered to produce something of greater value than that available without negotiating. The BATNA becomes the standard against which a negotiated agreement should be measured. BATNAs' require development and almost all the Cost Factors will be associated to them. For example, your best alternative might be litigation or a hearing. Also be sure to consider what you can do if you did not have the Hearing/Litigation option.

WATNA (Worst Alternative to a Negotiated Agreement) - The WATNA is not only the opposite of the BATNA but usually clearly identifies the value or motivation for negotiating. The WATNA often assist in establishing your walk away. On the other hand,

litigation or a hearing may be your worst alternative because there is no guarantee that you will “win” or be successful.

Facilitation, Mediation, Arbitration, and Hearing/Litigation - Identifying the costs of these various alternatives provides the opportunity for practical comparison.
Internal Resources (Professional /Support/Clerical) - Costs associated with having professional internal resources (i.e. engineers, accountants, geologists, senior managers etc.) deal with the issue which includes collecting and producing all supporting documents. Wages, Supplies and Transportation directly associated.

External Resources (Professional / Support/Clerical) - Costs associated with engaging outside professional resources (i.e. as above, Legal, Experts, ADR service provider, facilitator, mediator, and arbitrator). Wages, Supplies and Transportation engaged in dealing with the issue.

Lost Opportunity - Possible costs directly associated with the issues (i.e. loss of production. Costs associated with having to move or assign personnel from duties to these specific issues which may not add value).

Time Value of Money - Forecast of the costs associated with value of receiving settlement now versus waiting years to settle and collect.

Other - Any other costs directly associated to the issues.

Risk Factor - Likelihood of success expressed in a meaningful numerical form (i.e. %, numerical scale). This percentage value should be assigned by external or internal legal counsel as the likelihood of success if you proceed to litigation or a hearing.