

CPR

International Institute for
Conflict Prevention & Resolution

Less Conflict. More Purpose.

CPR's Dispute Prevention Pledge for Business Relationships

“The best time to agree not to fight is when you’re not fighting. So you can go to your competitors, your major customers, before you have a dispute and you can agree on a process that in the event you do have a dispute, you have already agreed on how you are going to handle it. And you can do that from a position where you’re not giving up anything at that stage, you’re not being weak, you’re actually being thoughtful.”

Scott Partridge, General Counsel, Bayer US, Pledge Signatory
Closing Remarks Day 3, CPR 2021 Annual Meeting

*“There are ADR mechanisms to avoid litigation and set up a dispute resolution process. These include arbitration and mediation. But we should begin the dispute prevention process before we get to those stages. The processes should focus from inception on the contractual relationship. **We’ll all benefit from putting in place means to solve disagreements before they become full-fledged disputes. So I urge you to consider: adopt the new CPR Dispute Prevention Pledge.”***

Carlos Hernandez, Retired CEO of Fluor Corporation, Pledge Signatory
Opening Remarks, Day 2, CPR 2021 Annual Meeting

Corporate Policy Statement on Alternatives to Litigation[©] and Law Firm Policy Statement on Alternatives to Litigation[©]

Since 1984, thousands of law firm and corporate signatories have committed to recommend and consider alternatives to litigation when disputes arise.

CPR 21st Century Corporate Pledge[©]

This pledge committed signatories to developing systemic, sustainable & global cost-effective dispute resolution processes.



At the time of contract, the parties may incorporate dispute prevention mechanisms in the contract or otherwise provide means for dispute prevention.

Definition of Dispute Prevention for Business Relationships

Dispute Prevention involves the **planning, monitoring** and/or **intervention** necessary to stabilize a business relationship when conflicts emerge. Dispute Prevention intervenes **before the conflict hardens** and escalates into a dispute by finding a solution that **maximizes the value of the business relationship**.

Dispute Prevention precedes Dispute Resolution in the **dispute management continuum**. Dispute Prevention concentrates on addressing conflicts in business relationships amongst the parties in **real time**, focusing on the parties' **objectives** and the **solutions** necessary to meet those objectives; in contrast, Dispute Resolution focuses on a legal dispute and questions of fault, liability or exposure and how to resolve those questions.

Dispute Prevention Pledge for Business Relationships

Companies and organizations will be asked to endorse the following statement of policy:

To **preserve relationships** in business arrangements, and subject to **mutually agreed-upon terms**, we will incorporate **dispute prevention mechanisms** into our arrangements where appropriate. The **range of mechanisms** may include, for example, reliance upon resources internal to the parties, such as implementation of contractual escalation clauses to defuse conflict within and between organizations, or third-party mechanisms, such as jointly engaging a dispute prevention neutral; all designed to enable **early identification of conflict** and **preventing** it from hardening into a dispute. This statement of policy does not commit us to any particular outcome, but only to the willingness jointly to deploy dispute prevention mechanisms to help us avoid disputes and maintain our business relationships and purpose.

- Dispute prevention mechanisms should be tailored to each company's mission, business plan and purpose for its business arrangement.
- Dispute prevention mechanisms cover efforts each party to a business arrangement can make whether: (i) within its own organization, (ii) jointly, by specifying in the contract the particular dispute prevention mechanism that they have selected or by pursuing that mechanism as part of their own chosen practices, and/or (iii) with the engagement of third parties to facilitate dispute prevention.
- The appropriate mechanism may turn on the practices in an industry sector, the organizational structure, business model or resources of the parties.
- There is no “one size fits all” mechanism.
- However, all mechanisms seek to encourage proactive steps to anticipate and manage conflicts.

Implementing Dispute Prevention Mechanisms

Internal Implementation

<u>Executive</u>	<u>Fiscal</u>	<u>Legal</u>
<ul style="list-style-type: none"> • Sign CPR's Dispute Resolution Pledge • C-Suite ownership of dispute prevention • Support for training and education on dispute prevention as well as change management • Include dispute prevention as part of corporate retreats, strategic planning, and executive and board planning • Support for post-dispute autopsy to identify root causes and prevent their reoccurrence 	<ul style="list-style-type: none"> • Assess dispute costs • Attribute costs to the budget of the department with the conflict • Allocate % of cost savings to the department with the conflict • Tie bonuses and other financial incentives to dispute prevention • Invite an inhouse risk manager to assess contract risks 	<ul style="list-style-type: none"> • Support for the design, development and drafting of dispute prevention mechanisms for all appropriate transactions • Understand and train on the dispute management lifecycle and prevention/resolution techniques • Use of data analytics • Invite inhouse litigators to assess contract risks • Conduct Legal audits <i>Early Resolution:</i> • Parallel litigation/arbitration and negotiation policy for all matters • Alternative outside counsel billing models to reward early resolution of conflicts

Internal Implementation (example): Human Resources

HR Prevention Tools

- Coaching
- Training and Education on dispute prevention
- Support for change management
- Policy Managers
- Ombud
- Employee Hotline
- Regularly Scheduled Open Forum
- Recognition Award of Company Prevention Champion

Joint Best Practice Implementation Tools

- Designate a relationship manager for each significant deal
- Joint assessment by deal partners of potential issues and conflicts
- Alignment on deal objectives as guiding principles in managing conflict
- Kick off meeting before deal closure encompassing all stakeholders and implementors
- Regularly scheduled “deal chats” to monitor deal progress and relationship
- Place pre-set checks in agenda to normalize introspection
- Shared online website or deal site
- Allow pre-authorized decisionmakers to modify contract within agreed upon bandwidth
- Side MOU or letter of understanding memorializing joint prevention intentions
- Alliance Management

Contractual Prevention Provisions

<u>Interest Alignment</u>	<u>Risk Awareness</u>	<u>Escalation Prevention</u>
<ul style="list-style-type: none"> • Partnering • Designated conflict point persons for each signatory • Joint contractual milestones • Joint contractual deadlines • Tie bonuses to collective goal and milestone attainment. • Project or deal managers • Early risk assessment with contingency provisions 	<ul style="list-style-type: none"> • Realistic risk allocation • Early risk assessment with contingency provisions • Establish agreed upon methodologies to mitigate damages • Breach allocation • Damage caps per type of breach • Damage percentage allocation consistent with percentage deal investment 	<ul style="list-style-type: none"> • Escalation clause • Stepped negotiations • Joint plan for management of concerns by designated conflict point persons • Business remedies in addition to legal remedies • Notice and cure provisions

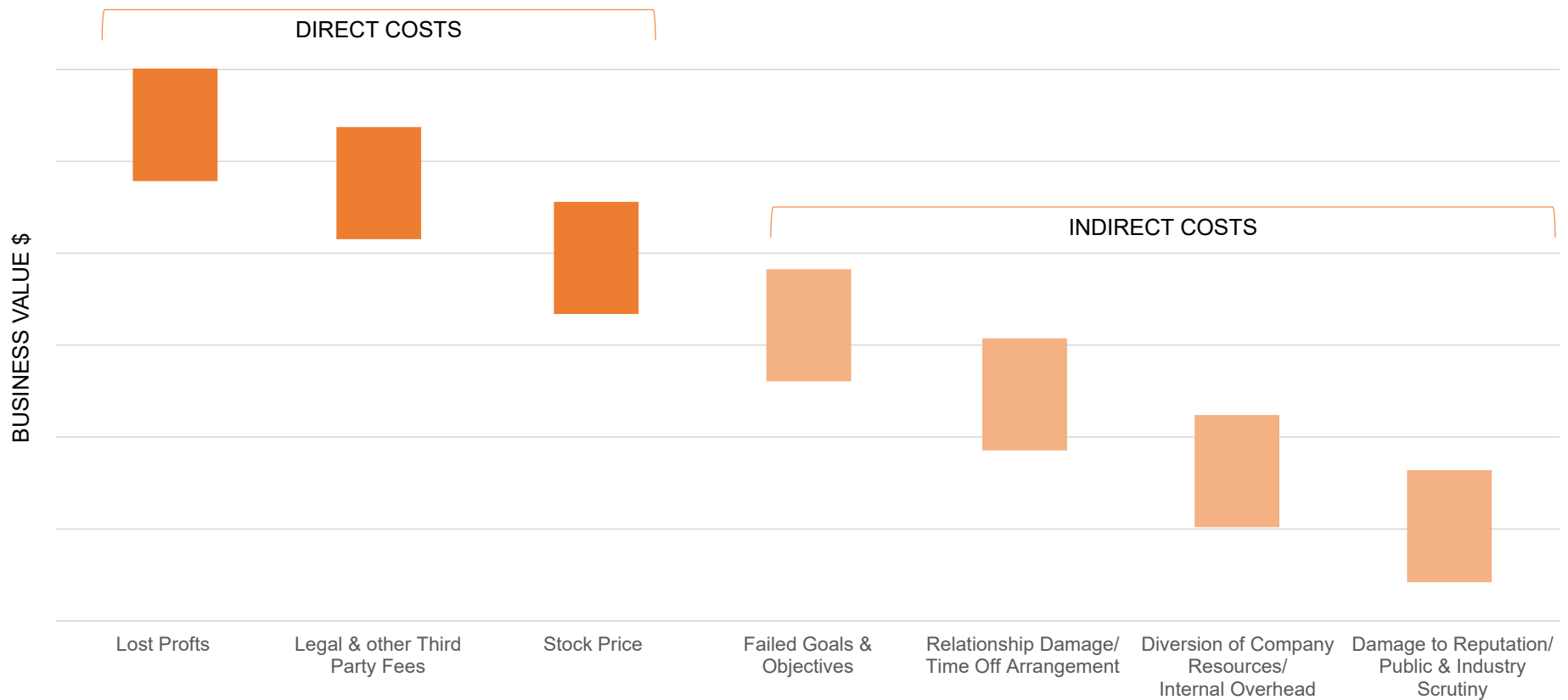
Third Party Facilitation

<u>Contract Formation</u>	<u>As Needed</u>
<ul style="list-style-type: none"> • Deal construction facilitation • Joint Independent Deal Legal Counsel • Joint Risk Manager to assess foreseeable issues • Joint expert to assess deal 	<ul style="list-style-type: none"> • Relationship Facilitator • Standing neutral • Ombud • Review board <p><i>Early Resolution:</i></p> <ul style="list-style-type: none"> • Early mediation including pre-filing • Real time onsite dispute resolution

Benefits of Dispute Prevention

- **Maintaining Corporate Purpose**
 - Dispute prevention allows the parties to focus on their business objectives rather than on costly and distracting disputes.
- **Business Continuity**
 - Dispute prevention can reduce or eliminate the costs associated with contractual disputes and the related business disruption when conflicts between parties arise.
- **Cooperative Working Relationship**
 - Dispute prevention provisions in a contract establish a mutual commitment of the parties to work in an honest and constructive manner with each other.
- **Cost-Savings**
 - Costs of implementing dispute prevention mechanisms are modest as compared to the transaction costs that both parties would incur in an adversarial dispute resolution process.

Why Dispute Prevention – Costs To Be Avoided



- Signing the Pledge signals a willingness to approach business arrangements in a constructive, reliable and commercially rational way.
- It proclaims an emphasis on optimizing the value of business arrangements even as inevitable conflicts arise.
- It promotes discussions within and between companies amongst a variety of stakeholders from lawyers to business leaders that focus on how best to maximize the arrangement.
- It does not limit your options but acknowledges the benefits of dispute prevention from maintaining corporate purpose to preserving cooperative working relationships to business continuity to saving unnecessary costs.
- It can enable a strategy to establish your organization as a **“partner of choice.”**
- Please find the Pledge [HERE](#) along with [FAQs](#).