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DISPUTE PREVENTION WORKSHOP



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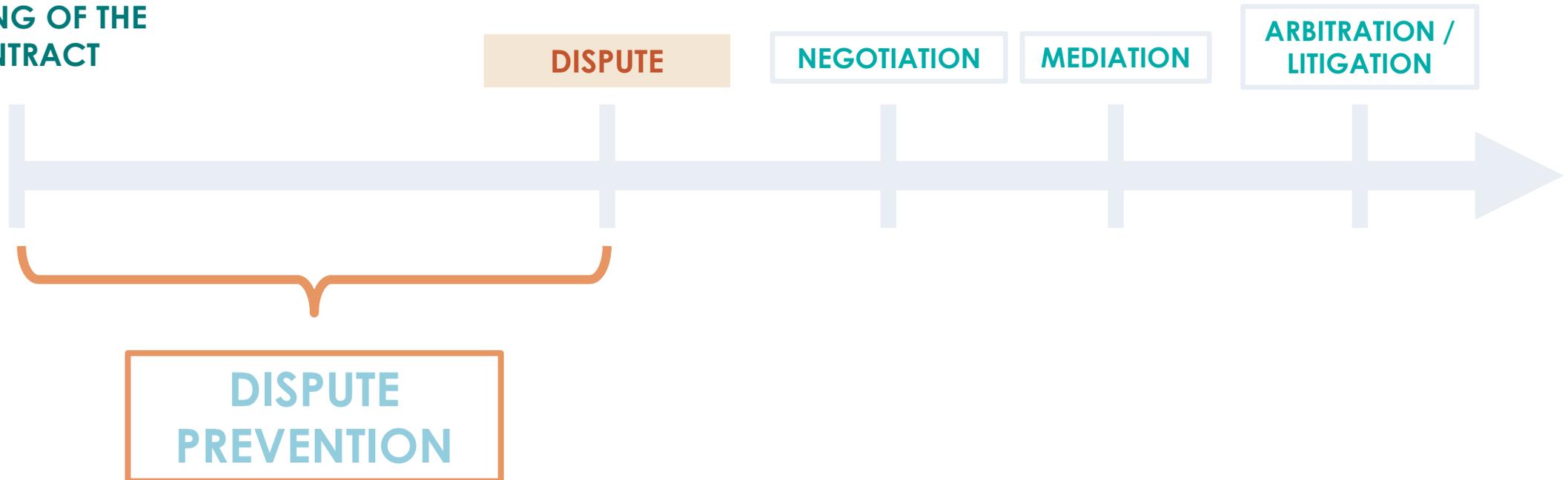
THE NEED FOR CULTURAL CHANGE

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PRACTICAL RECOMMENDATIONS

1. DISPUTE MANAGEMENT CONTINUUM

NEGOTIATION
+
DRAFTING OF THE
CONTRACT



2. THE NEED FOR CULTURAL CHANGE



CURRENT PRACTICE

1. Dispute arises
 2. Lawyers exchange notices
 3. Executives hold meetings
 4. Difficulties in resolving impasse
- **The “Firefighters” paradigm**
 - **Short-term mindset**
 - **Reactive model** → waiting for the problem to arise and taking action only then
 - Gap between deal people x people responsible for the implementation
 - Company spends money with the dispute only when it arises (usually in larger, significant and unpredictable amounts)
 - Fewer possibilities for action and higher costs



OUR RECOMMENDATION

- Investing in dispute **prevention**: transition to a more balanced model - **align short and long term**
- Investing energy and resources **before** a dispute arises to prevent it
- **Proactive model** → focused on building relationship and trust during the performance of the agreement, before any disputes
- **Techniques and recommendations**: see guidelines proposed by CPR (examples: multi-tier clause, holding regular meetings between executives, brainstorming to foresee problems, hiring third-party neutrals, etc.) - **SEE NEXT SLIDES**

2. THE NEED FOR CULTURAL CHANGE

**NOT ALL DISPUTES ARE AVOIDABLE,
BUT MANY ARE**

RELATIONSHIPS MATTER

DIALOGUE MATTERS

TRUST MATTERS



Some obstacles of dispute prevention:

- Reactive thinking (i.e., not thinking ahead)
- Bad faith
- Aggressiveness
- Opportunistic behavior
- Internal leadership opposing any deal
- Hidden agendas, personal interests

2. THE NEED FOR CULTURAL CHANGE

SOME BENEFITS OF DISPUTE PREVENTION:

More efficient allocation of resources (people, time, financial resources)

Lower investment when compared to litigation costs

Preservation of the company's reputation and image

Preservation of business relationships with partners

Compliance and ESG

3. PRACTICAL RECOMMENDATIONS



BEFORE SIGNING:

Draft clauses with the mindset of preventing disputes, rather than creating them:

- Establish company policies / guidelines for drafting contracts to prevent disputes
- Include dispute prevention rules and protocols in the contracts
- Bridge the gap between deal people and implementation people
- Due diligence on reputation and image of commercial partners
- Periodic sharing of information internally: executives should anticipate this sharing of information during negotiation, and legal counsel should participate
- Engage third-party neutral/facilitator
- Use “Deal Mediation”



AFTER SIGNING (A):

Pre-work: mapping company interests in order to enhance dispute prevention:

- Understanding what is non-negotiable for the company
- Understanding what is essential to the other side as well
- Encouraging empathy and active listening so that both sides communicate better

3. PRACTICAL RECOMMENDATIONS



AFTER SIGNING (B):

Build trust and constantly monitor the "health" of the relationship:

- Start as soon as possible!
- Open and transparent dialogue
- Be careful with **translations and cultural misunderstandings**
- Organize a "**pilot project**" with strategic contracts and partnerships
- Periodic meetings between executives with information passed on to lawyers
- Analysis of past disputes: **(i)** identify "root causes", **(ii)** identify obstacles to dispute prevention / resolution, **(iii)** act early
- Meetings to discuss **the future as well** (brainstorming possible problems that may arise in the future)
- Use **third-party neutral/facilitator from the outset** in strategic cases

SEE CPR's website for more information and resources!

<https://www.cpradr.org/resource-center/dispute-prevention>



THANK YOU!

