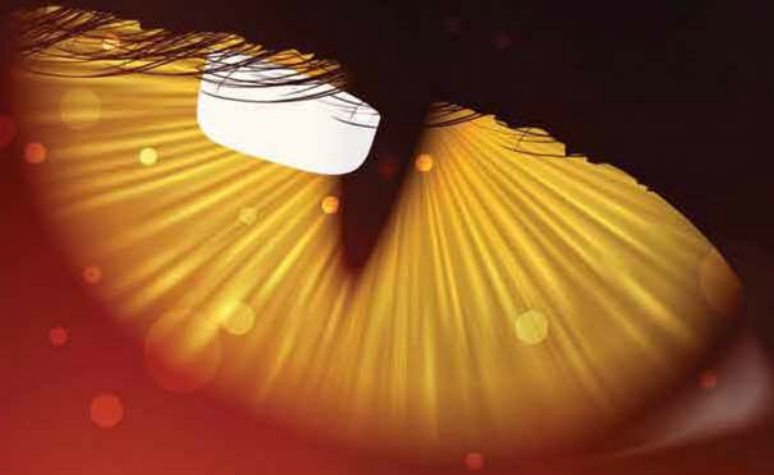


# Fighting Fire with Insight:

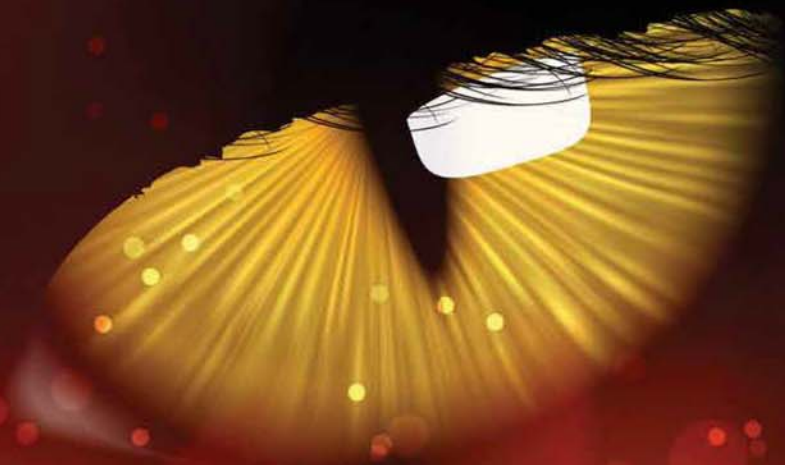
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How to Prevent and Resolve Alliance Disputes

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By Brent H. Harvey, CA-AM, David S. Thompson, CA-AM, and Steven E. Twait, CSAP



**When an alliance** is created, a contract formalizes agreements that have been painstakingly negotiated in categories such as intended outcomes, responsibilities, decision making, and resource commitments. Despite the existence of a sound contract, the interactions between partner companies can go “off script” in short order, even when both parties are operating in good faith. In certain situations the contract might be silent, or certain provisions might be open to interpretation. Anyone with practical alliance experience can testify that such situations often give rise to full-fledged disputes.



The dictionary defines a “dispute” as “a disagreement, argument, or debate.”

This description is helpful because it implies the range of disputes you might encounter in the context of your alliance work.

Such disagreements can be caused by diverse views on strategy

to achieve commercial success, expected levels of investment, and financial liability. And while intensity will vary—as will frequency—you can rest assured that you will be involved in a dispute at some point in your alliance’s life cycle.

Given the inevitability of these situations, it’s im-

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portant to understand how an alliance manager can facilitate the resolution of disputes—and in some cases prevent them from occurring at all.

First, however, it might be useful to look at the alliance professional’s overall role vis-à-vis disputes. In such circumstances, the alliance manager is in a unique position as an advocate for the overall alliance. The alliance manager has the perspective of managing the business risk, human risk, and legal uncertainties associated with the dispute as well as a broad perspective of how the disagreement could impact the alliance and the partner. The alliance manager also can develop the resolution strategy, keeping in mind both the short- and long-term goals for the alliance.

The key is to leverage this perspective and to apply your knowledge and experience to add value. The alliance manager has the opportunity to take a leadership role in three aspects of disputes: before, to prevent disputes; during, to direct resolution; and after, to reflect and harvest lessons learned.

It might be helpful to think of an alliance dispute as a fire, with the alliance manager as a firefighter who seeks to prevent fires, fight them and minimize damage when necessary, and then understand their causes with the goal of preventing future catastrophes.

### An Ounce of Prevention

It’s often said that prevention is the best cure. That is certainly the case in the category of firefighting, as we all recognize the importance of active smoke detectors, safe use of electricity and combustible materials, and the ready availability of extinguishers. A similar concept can be applied to an alliance, where the alliance manager can take a leadership role in establishing preventive measures that mitigate the risk of future disputes.

During the initial contract negotiation stage, for example, the alliance manager should ensure that the contract language specifically spells out who is responsible for what, both operationally and financially. Decision making and escalation processes are also important elements to articulate clearly in the contract.

Another opportunity comes during alliance startup or transition to new leadership, when the alliance manager should take steps to build trust between the partners and influence alliance leaders to establish an appropriate level of transparency. Often such transparency and trust help parties identify issues early and reach agreement on matters that otherwise could result in a dispute.

The presentation of a jointly aligned contract summary is another valuable activity during startup. It provides a forum for everyone involved in the alliance to gain a common understanding of the contract’s key terms and operational aspects. The presentation also can serve as a tool for onboarding



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new alliance colleagues over the course of the partnership's life cycle.

Yet another preventive measure is to train team members on good documentation practices. Legal counsel can provide guidance on how to document potentially sensitive or controversial topics with the goal of mitigating the risk of unintended consequences, whether in email, governance minutes, or other documents. It is also important to ensure that financial as well as operational decisions are unambiguous and clearly captured, as quite often disputes boil down to disagreements about money. To help the alliance stay on track, decisions should be made in a governance meeting setting, documented in writing, and memorialized in the

approved meeting minutes. (Source: *Making the Minutes Count: The Critical Importance of Accurately Documenting Alliance Meetings*, *Strategic Alliance Magazine*, Quarter 3, 2013)

Finally, it is important to note that over the course of time, situations contemplated in the original agreement can change. Governmental and regulatory requirements can shift. New competitors or disruptive technologies might enter. One party's corporate strategic priorities may shift. If this is the case, the alliance manager should ensure that the contract is reexamined and amended to reflect current practices. Experience has taught us that an inaccurate contract opens the door to a potential dispute.

*Lilly*



## Minimize Damage

In the event of a blaze, the fire department is typically the first to respond with the goal of minimizing damage. In the event of a dispute, the alliance manager should seize the opportunity to direct dispute resolution. Because the stakes are often high, a recommended approach is to establish a cross-functional internal team led by alliance management. This core team's objectives should be to develop a resolution strategy, create a communications plan, gain executive approval, and execute.

The expertise of the group's participants should be based on the type of dispute, but you will typically need to include legal, finance, business, and an executive sponsor. The depth and breadth of the core team, resolution strategy, and communications plan will depend on the complexity and materiality of the dispute at hand, much like the extent of fire department equipment and number of battalions deployed depend on the scale of the fire. The level of dispute complexity is typically a function of technical intricacy, the number of functional areas impacted, and the breadth of geographies involved.

Once the core team is established, a good next step is fleshing out the dispute resolution strategy, starting with a crisp definition of the problem. Other components include identifying the potential business impacts and risks and estimating the potential financial implications. Equally important is to assess the dispute from the other party's perspective. Understanding their arguments and rationale can help stimulate ideas for a path forward. Legal engagement and contractual understanding is essential at this stage. Counsel can provide an opinion on the relative strengths of your position and can identify documents that may shine new light on the dispute.

The final component of the resolution strategy is the settlement action plan, which typically is based on the escalation process documented in the contract. Your action plan should lay out steps describing who does what and when. Quite often the last step in the escalation process is arbitration or mediation, which both parties would prefer to avoid. If, however, all other means have been ex-

hausted, arbitration or mediation may be the only means to reach resolution.

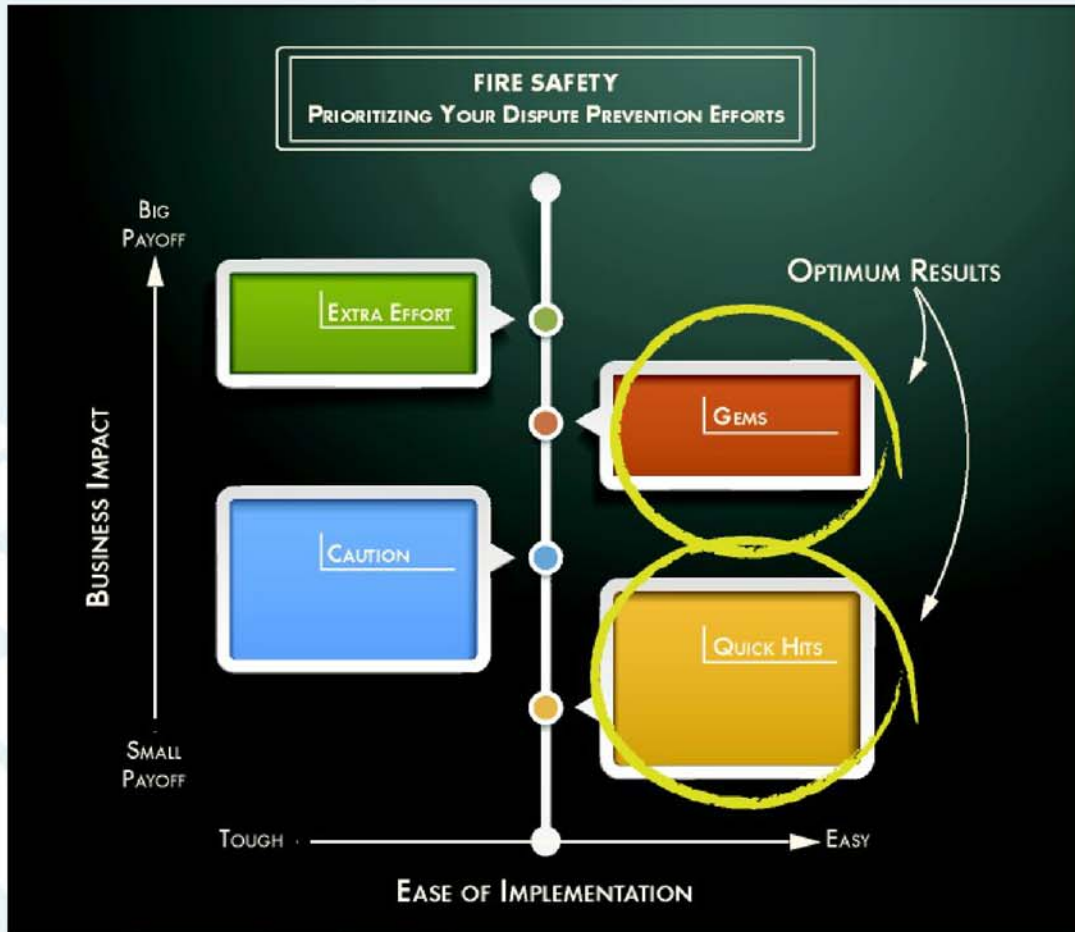
The next step is to create a communications plan that addresses key messages and logistics, both internally and externally if applicable. As part of this work, you should identify the key internal stakeholders and ensure alignment on the communications plan. By making sure those team members are part of the solution, you can help temper the negative energy that often surrounds the entire dispute process.

The tension mentioned above has the potential to spill over from the specific area of dispute into other components of the collaboration. With this in mind, another way to reduce negative energy and unintended disruptions is to work with the alliance manager from the partner firm to agree on how to keep the dispute's effects away from day-to-day business as much as possible. To protect both parties, for example, dispute resolution discussions should be handled in a structured manner, led by the alliance managers, and in most cases held outside of governance meetings.

Gaining executive approval of the resolution strategy and communications plan is the last recommended step before execution. Top-level alignment and executive sponsorship are critical in order to get the support and resources needed to put your plan into action.

## Lessons Learned?

Disputes can take considerable time and resources to resolve. When the dust has settled, it's a perfect opportunity to reflect on what's been learned while the information is still fresh in your mind. Working with the core team, the alliance manager can initiate the after-action review process to capture what went well and what should have been done differently. As implied in the informational graphic appearing with this article, framing what you've done in terms of business impact and ease of implementation can help prioritize where to focus in the future.



As you can see, while the anticipated payoff isn't high, "quick hits" are easy to implement. In an alliance context, a "quick hit" might be to provide refresher training in a particular area. "Gems" have a higher payoff and could include incorporating key lessons learned into future contract templates so you can avoid revisiting the same issue. Just as experience has made clear the critical importance of smoke detectors and safe electrical systems, lessons learned during heated alliance disputes can be leveraged to make future collaborations better and more productive for everyone.

As you fulfill your role as alliance manager and in anticipation of the next dispute resolution you undertake, keep these principles in mind:

1. Start with a good contract. Ensure that both parties understand the key terms and align on implementation.
2. Follow the contract. Amend the contract as necessary to ensure it's accurate.

3. Document decisions—including financial and operational aspects—in governance meeting minutes.
4. If you encounter a dispute, establish a core team to lead the resolution process. ■

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