

Contract management's effect on in house counsel

Impacting contract visibility, analysis and compliance



Contents

- 2 The in-house counsel's perspective:
How contract management software impacts contract visibility, analysis and compliance
 - 2 The 4 core benefits of contract management
 - 3 Transition from legal advisor to strategic partner
 - 3 Mitigate risk and enforce compliance
 - 4 Increase legal productivity
 - 5 Gain 100 percent contract lifecycle visibility
 - 5 Conclusion
-

The in-house counsel's perspective: How contract management software impacts contract visibility, analysis and compliance

Growing global demand for goods and services has strained legal departments as they are being called on to deliver faster contracting, yet at the same time being asked to maintain the same level of diligence and control over the process. In many instances, the internal legal organizations are not growing at the same pace as the increased demand within the marketplace and the number of contracts being negotiated. As such, legal teams across global organizations are effectively being asked to do more with the same. This increased demand is occurring at a time when regulatory and compliance demands are rising, as are legal risks and business pressures to re-negotiate contracts. Mergers and acquisitions, restructuring and reorganizations can also add a tremendous workstream to the already pressing load.

Contracts are the legal representation of the agreements between enterprises and external parties and therefore represent significant fiscal and ethical commitments for both parties. Often times they are viewed as pre-litigation tools that set the rules of the 'game' should a dispute arise. They are also the embodiment of hours or weeks of negotiations and the foundation for business relationships between vendor and customer that last for months if not years.

Contracts are the foundation for many of the strategic and cost-savings initiatives a company undertakes – and their complexity continues to grow in the face of expanded regulatory and compliance requirements and ever increasing complex business relationships.

The average Fortune 1000 company can maintain as many as 20,000 to 40,000 active contracts, often with obligations that number in the tens of thousands for complicated services agreements. Yet most contracts are still languishing in file cabinets, being managed using manual processes or with very limited technologies. The status-quo "file and forget" approach often leads to:

- Deficient contract approvals processes
- Un-auditable contract paper trails
- Poor contract and exposure analysis
- Increased legal and financial risk
- Poor contract visibility and control
- Lost savings, profit and revenue opportunities

To address these issues, a growing number of Global 2000 companies have automated their contract management processes. Achieving greater spend visibility with a central, electronic contract repository can be a primary reason companies are investing in contract management technologies, followed by a desire to gain greater control over contracts for compliance reasons.

Best-in-class contract management software solutions typically span virtually every stage of the contract lifecycle, from proposal and contract creation, negotiation, obligations management, and compliance enforcement, through contract amendment, renewal, and ongoing analysis.

The 4 core benefits of contract management

This paper offers 4 core benefits to legal departments when they implement contract management software solutions.

Transition from legal advisor to strategic partner

Using the assets at the disposal of the legal department, for example the intelligence held within the contract library and the negotiation acumen of the in-house counsel, to move legal from being an advisor to becoming a more integral part of the enterprise's strategic direction.

Mitigate risk and enforce compliance

Stop fiscal and ethical problems before they happen by getting the contract right the first time. Achieve this by using a contract management framework to enforce and help facilitate compliance through the use of best practice language and approvals.

Increase legal productivity

Enable the efficient creation, negotiation and approval of contracts by automating the process and only involving the 'right' resources at the right time and calling in the best legal minds in the enterprise when it is really necessary.

Gain 100 percent contract lifecycle visibility

Visibility into what is happening in your active contracts at virtually every stage of the contract lifecycle is critical. From the creation, negotiation, and approval process through to tracking milestones and renewals, knowing who, what, where, when and how much at virtually every stage is key to true contract management.

Transition from legal advisor to strategic partner

The legal department should be viewed as a strategic partner in deal structuring and negotiations. In order to facilitate the move from cost center to strategic partner, the legal team has to find ways to streamline and automate those common and sometimes simplistic tasks that used to be achieved through manual processes. Legal also needs all the intelligence held in the active contract library readily available to provide advice to

internal stakeholders in aiding the decision making process. Legal having the right information at the right time is critical to adding value to the enterprise.

Contract management solutions can enable a dynamic view into virtually all of the business' obligations and commitments across the global organization. This enables the authorized key stakeholders to view critical contract data in real time without having to expend significant efforts or work through gatekeepers to locate contracts in a filing cabinet. At the heart of this visibility is a contract library or repository which provides a complete, current view of virtually all contracts, as well as supporting documentation, amendments and sub-agreements. Best-in-class solutions can enable a single view of prevailing language and terms, even as contracts are amended over time. Contract templates and authoring tools, exception notifications and automation of approvals processes enable legal to create stronger agreements and help facilitate compliance to both internal policy and external rules and regulations. The solutions typically allow for a library of approved terms and conditions, with alerts and approval requirements for modified agreements as well as providing visibility into the contract process bottlenecks.

With enterprise contract management, companies can instantly access information about their contracts and terms, analyze the contracts across specific categories and departments and take an enterprise-wide view to determine trends, analyze exposures and risks, or gain insight into opportunities for savings or to increase revenue. Once a trend, either positive or negative, legal counsel can then take affirmative steps to act upon that information. This empowers legal to focus their time on more strategic activities, rather than wasting time searching for contracts..

Mitigate risk and enforce compliance

From Sarbanes-Oxley, Securities and Exchange Commission (SEC) and Financial Accounting Standards Board (FASB) rules to internal policies and controls, managing compliance at a global corporation brings significant requirements and challenges. Companies need to focus on three areas of compliance, “State” enacted rules and regulations, internal policies that may not have any connection to specific governable laws rather business rules the company has set as an internal standard, and finally the obligations contained with the contract. Many legal departments are severely limited in their compliance efforts due to having a partial view of their risks – and limited visibility into, and control over, contracts.

With contract management software, legal can help facilitate and enforce compliance through (a) automatic notification and approval routing when a suggested contractual provision is out of line with standard language, (b) by providing greater and timelier visibility into exposures and risks and (c) tracking of non-standard language that may expose the company to greater risk, thereby allowing it to mitigate any potential damages by getting ahead of the risk. Many enterprises using contract lifecycle management have observed immediate benefits in their visibility into and identification of financial and legal risks.

Contract management solutions can enable improved risk assessment and help facilitate compliance by (a) providing instant and more in-depth visibility to contracts and obligations; (b) by providing tools to analyze contracts and identify risks; and (c) by linking contracts and the contract management solution to strategic operational and tactical systems and actions. In addition, contract management solutions can lessen a company’s audit and compliance costs.

As many contracts are managed by exception, material events such as delivery dates, contract renewals, vendor obligations, pricing revisions, etc. are not readily evident. This requires legal and other departments to manually manage key deliverables for a contract to help ensure that partners and vendors are delivering on their commitments. Best-in-class

contract management technologies provide configurable event triggers based on predefined parameters that are customizable for each contract. Predictive notification to the appropriate stakeholder for key events helps verify that a contract is actively managed and essential deadlines and deliverables are not missed. With tight integration to enterprise systems, contract management solutions can help ensure that financial and order management systems are in-line with contract terms and conditions. Supply and contract management solution suite providers, such as IBM, have pre-built integrations with spend, sourcing, supplier performance management and compliance solutions. These integrations can help ensure that the terms negotiated with customers and trading partners during the contract process are realized after the contract is executed.

Contract management solutions can speed and simplify the audit, investigation and reporting process for legal, helping ensure successful transfer of information the first time and virtually every time. The solutions can eliminate the need for legal to search through mountains of e-mails and notes to create an audit trail for approvals, etc.

Increase legal productivity

By automating, reusing standard language and gaining greater control over the contracting process, companies can significantly reduce risk and better enforce corporate standards and advantages.

With authoring and negotiation tools, best-in-class contracts management solutions permit professionals to work in Microsoft Word to create contracts from pre-approved clause and term libraries, yet still enforce pre-determined templates, language, terms and approvals. This enables legal departments to work with familiar technology while still helping ensure that corporate standards and approvals are followed.

Too often, legal personnel create unique provision which do not create additional legal protection. This leads to many variations on the same provision. These variations not only delay the contract review process, but also make knowledge transfer very difficult. When companies go through the exercise of selecting and adhering to standard and alternative clauses they are able to move through the negotiation process much more quickly but also empower consistent knowledge to be transferred to new employees.

Control over primary and alternate clause usage can reduce the opportunity for frontline field or other unauthorized personnel to create rogue contracts that do not conform to company business and legal standards. Deviations to approved templates and terms can be flagged and contract approvals rerouted for appropriate legal or management review. With contract management solutions, corporate and legal executives can establish defined, finite control over who can create, modify and approve contractual agreements, thereby helping eliminate the need for legal to review contracts that are developed with standard language. This control helps enable creation of stronger contracts and reduction of risk associated with undesirable terms and conditions. Legal can accelerate its review and approval of contracts without sacrificing quality, specifically by routing contracts for certain levels of legal review based on defined conditions or exceptions. One major biotech company uses such technology to automatically receive and route contract requests for less strategic matters to

paralegals. By applying this type of strategic processing, the company was able to alleviate the demand on their attorneys' time by more than 25 percent, equating to significant cost savings.

Gain contract lifecycle visibility

Contract management solutions can enable the creation of stronger contracts, not only by enforcing compliance to approved policies, terms and language, but also by using the intelligence and analysis of contracts across the organization. The more a company improves its ability to manage and enhance business terms at virtually every stage of the contract lifecycle, the more it can transform contracting into a strategic competence. Leading contract management solutions provide advanced functionality, such as workflow, alerts and reporting, that help to proactively review contracts; as well as executive dashboards and custom reports to generate operational information for continuous improvement. This enables legal to view contracts at a more strategic level to find improvement opportunities whenever they need to occur, even if it is a currently active contract.

Having visibility into active contracts is extremely important if a mass change becomes necessary due to events like regulatory change, M&A activity, reorganization, etc. When an agreement needs to be amended, having the functionality that allows for automatic mass changes and distribution saves countless hours and dollars as well as reduces the risk that something was missed.

Contract management solutions can enable stronger processes and negotiation. Having detailed supplier, customer or partner performance information linked to the contracts can enable more advantageous negotiations during renewals. With a contract management solution's analytical capabilities, legal and contracting professionals can better measure cycle times and evaluate productivity; assess contract risk levels across the organization and amend or eliminate sub-optimal contracts. Legal can also leverage policy pop-up capabilities within a contract management solution to educate the business user as to why specific language will not be accepted or may require senior level approval. This allows the business user to conduct

stronger negotiation on the front end rather than routing an unacceptable agreement to legal for review.

Contract automation helps to ensure that virtually all stakeholders to the contract process – including legal, finance, sales, and procurement – have visibility into and control over the contract both during negotiation and after execution. The legal department is able to remove themselves from tactical activities such as locating contracts or approving standard language, and can focus on more strategic activities such as reviewing negotiated terms that fall outside of preapproved language and uncovering other bottlenecks or risks in the process.

Conclusion

Contracts are an integral part of the way virtually every business operates and managing a business starts with proactively managing contracts. Understanding what is happening at each stage of the contract lifecycle is integral to true contract management.

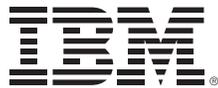
IBM® Emptoris Contract Management helps the in-house counsel proactively streamline and control virtually every aspect of the contracting process. The legal team can help ensure the way their enterprise interacts with other enterprises and is as efficient as possible making the company easier to do business with. This efficiency can also mean an increase in the productivity of overstretched counsel and paralegals.

IBM Emptoris Contract Management is designed to help enable the enforcement of standards for operational and regulatory compliance that mitigates risk within contracts. By not opening loopholes or overexposing the company, it can potentially reduce the amount of money spent on costly litigation by getting the contracts right the first time.

One of the most important aspect of managing contracts by using a robust industry-leading solution is that the in-house counsel can focus on being lawyers and stop spending hours reviewing standard contracts unnecessarily and enforcing or rewriting the same standard clauses time and time again

because there is no mechanism to help ensure its automatic inclusion. Lawyers should not have to spend hours looking for milestones when a system can automatically tell them when that milestone is approaching.

In summary, contract management solutions can help enable legal departments to significantly reduce their reliance on paper, gain greater visibility and control over their contracting processes, significantly reduce risks and deliver even stronger agreements and more effective contracting and compliance for the business. In an automated contract management environment legal can add more value to the business by becoming more involved in strategic decision making.



© Copyright IBM Corporation 2013

IBM Corporation
Route 100
Somers, NY 10589
USA

July 2013

IBM, the IBM logo, ibm.com and Emptoris are trademarks or registered trademarks of International Business Machines Corporation in the United States, other countries, or both. These and other IBM trademarked terms are marked on their first occurrence in this information with a trademark symbol (® or ™), these symbols indicate U.S. registered or common law trademarks owned by IBM at the time this information was published. Such trademarks may also be registered or common law trademarks in other countries. A current list of IBM trademarks is available on the web at “Copyright and trademark information” at www.ibm.com/legal/copytrade.shtml.

The information contained in this publication is provided for informational purposes only. While efforts were made to verify the completeness and accuracy of the information contained in this publication, it is provided AS IS without warranty of any kind, express or implied. In addition, this information is based on IBM's current product plans and strategy, which are subject to change by IBM without notice. IBM shall not be responsible for any damages arising out of the use of, or otherwise related to, this publication or any other materials. Nothing contained in this publication is intended to, nor shall have the effect of, creating any warranties or representations from IBM or its suppliers or licensors, or altering the terms and conditions of the applicable license agreement governing the use of IBM software.

References in this publication to IBM products, programs, or services do not imply that they will be available in all countries in which IBM operates. Product release dates and/or capabilities referenced in this presentation may change at any time at IBM's sole discretion based on market opportunities or other factors, and are not intended to be a commitment to future product or feature availability in any way. Nothing contained in these materials is intended to, nor shall have the effect of, stating or implying that any activities undertaken by you will result in any specific sales, revenue growth, savings or other results.



Please Recycle