



Contributors
Nancy Jessen
Jason Smith

The General Counsel's Role in Driving Enterprise Change for Contract Lifecycle Management

Contracts are the lifeblood of companies. They describe in detail the rights and obligations of the company and its customers, vendors and partners. A well-written contract provides parties with a mutual understanding of the terms and conditions, and sets expectations of the relationship. But in addition to framing rights and defining responsibilities, contracts should provide other tangible benefits to the business. In an ideal world, when looked at as a portfolio, contracts have the ability to provide valuable insight into the performance obligations of an organization and a deeper understanding of key vendor and customer relationships. Often the needed in-depth view into the contract portfolio doesn't exist as the many departments and functions involved don't operate with unified systems and processes. The steps in the contract lifecycle—including negotiation, maintenance of originals and amendments, production and delivery, and financial accounting—are often managed as independent tasks.

Whether it is sales, product development, pricing, finance, or fulfillment, most of these functions are only involved during one specific point of the contract lifecycle and either do not want or are not prepared to own the process as it extends beyond their functional area. As a result, what could be a seamless business process turns into a series of disjointed events and data hand-offs.

In contrast to other corporate functions, the Office of the General Counsel (OGC) is often involved in all aspects of a company's contracts. While other functions are often the primary business owner of discrete steps and activities, the OGC is an important contributor throughout the contract lifecycle. The OGC has the opportunity to translate this contributing role into a controlling position to drive consistency, efficiency and risk mitigation on an enterprise basis.

This assumption of responsibility is part of a greater paradigm shift where the OGC is moving from a reactive, transactional role to a strategic business partner, proactively aligning its commitment to managing legal risk and compliance with the company's commitment to financial results.

In order to extend this new paradigm to the contract lifecycle, the OGC itself must continue to evolve. The OGC's involvement with setting the business strategy and risk tolerance should be embedded into contract templates and negotiation strategies. Attorneys need to transition from providing advice only on the legal terms of specific contracts to contemplating transactions in the larger context of the company's vision and capabilities.

While the OGC needs to focus inward to drive this change, it must also promote a change in its business clients. Clients have become comfortable with a process of crafting near final business terms *then* handing the contract over to the Legal Department to focus on the legal terms. Because the legal aspects of a deal can often influence or alter the business-side, dealing with both early in the process helps avoid conflicts and delays in the final stages of negotiating a contract. The OGC must educate its clients to engage the Legal Department early in the formation of a deal, encouraging a shift from its current gatekeeper role to that of a contributing business partner.

One way to engage in earlier involvement is to focus on the business process of the contract lifecycle. The OGC can enable change in the contract lifecycle by developing processes and implementing systems that embed business logic and legal review. As stated earlier and depicted in Figure 1, the Legal Department is often not the primary business owner for each of the steps included in the contract lifecycle, but can drive continuity of process and information exchange between the primary business owners.

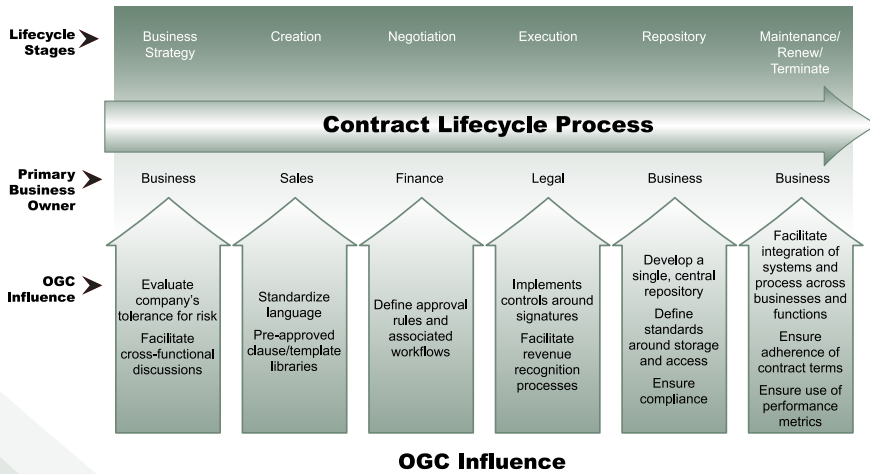
Even before the contract lifecycle begins, the OGC can establish a foundation of rules around the entire process, as once again it is in the best position to recognize the company's risk tolerance and translate that into its contracts. As the hub of the contracting process, the OGC can facilitate the discussion between functional groups with competing goals to establish agreement on the corporate appetite for risk. Setting

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rules and policies up front increases efficiency so that processes don't get bogged down with each deal variation. It also improves consistency across deals, further reducing the risk exposure of the company.

Figure 1



1. BUSINESS STRATEGY

As a starting point, criteria is jointly developed and agreed upon between the Legal Department and other functions to determine limits of acceptable risk for contract terms such as margin, volume, delivery timeframes, and warranties. Variations from these limits would necessitate involvement of the Legal Department. Under this type of system, business clients' roles will transform from dependence on the Legal Department for contract drafting and review to an environment built around concepts like self-service, pre-approved workflows and clauses, and automated workflow routing for approvals and signatures. These changes would allow the process to become more integrated and consistent while also reducing cycle time and focusing Legal Department resources on the highest risk, highest value contracts.

2. CREATION

Creating and managing a library of standard templates and clauses in a user-friendly system creates an incentive for internal business people to access and use pre-approved language. Rules around use can be implemented, such as embedding some of the legal know-how into an automated process with wizards and self-service kiosks. Standardizing legal language becomes a win-win situation whereby clients can go through the contract process without engaging the lawyers yet, because of pre-approval language and built-in escalation procedures, lawyers can take comfort knowing that the contracts being generated comply with corporate policy and risk management strategies.

3. NEGOTIATION

During negotiation, gaps can occur as versions of a contract get passed back and forth, from party to party. Between trying to reconcile multiple drafts and the incremental additions of approval layers, this phase can become a very inefficient part of the contract lifecycle. The ideal state is upfront enforcement of the defined criteria and policies for a more efficient process, thus bypassing unnecessary approvals. In order to influence change in this phase, the OGC must define rules regarding what can and cannot be negotiated without additional approval.

4. EXECUTION

The most important part of the contract lifecycle is the execution phase. Without execution, there is no legally-recognized agreement between parties. All the negotiation and haggling mean nothing if the contract has not been executed. Too many times however, there are gaps in the proper controls surrounding executed contracts that can lead to revenue leakage and potential problems with revenue recognition. Contracts provide the needed evidence that an arrangement exists, a key requirement allowing a company to recognize revenue of a contract.

Often amendments and change orders are not handled with the same level of control as the original contract; however the contents of these documents are just as significant and should require the same scrutiny and approvals.

The best practice is to have a well-defined process, as well as proper controls around contract execution and storage. The OGC can establish proper controls by insuring contracts are appropriately reviewed and approved, as required for revenue recognition. Again, enabling technology during the execution phase can provide foundations for efficient changes while simultaneously increasing corporate controls.

5. REPOSITORY

Unfortunately, executed contracts are often stored in various locations and formats—from file cabinets in the Legal Department or worse, a sales person's garage, to a network drive that few know about. If a question or dispute arises, those contracts and related documents need to be easily accessible by the lawyers for review. But without a central repository, critical time is lost searching for the appropriate documents. Also, when there is no global corporate view of the contractual obligations of the company, it becomes impossible to develop meaningful performance metrics. It is imperative that the OGC enforce a central repository for the storage of contracts and related documents, and define the standards for storage and access to the documents and data.

6. MAINTENANCE/RENEW/TERMINATE

The ongoing maintenance, renewal oversight and termination of contracts today is typically managed outside of the OGC and rarely at a portfolio level. In this fragmented state, contracts can inadvertently be renewed and opportunities lost to renegotiate for better financial arrangements and terms based upon historical performance. On an annual or pre-renewal basis the OGC can facilitate better business decisions by providing performance metrics that incorporate data from the contract management system and other corporate systems, such as product databases, pricing, and order management systems. The goal is to provide a global view for involved stakeholders at an individual contract-, customer-, and product-level.

Companies can not survive without contracts. Furthermore, inconsistent and disjointed contract processes result in inefficient operations. The optimal state is a seamless integration throughout the entire contract lifecycle, from opportunity identification through termination. While the contracting process involves many stakeholders in the company, the OGC has a unique opportunity to drive change throughout the process and throughout the enterprise. Changes that are both necessary for the company and reflective of the changing role of the OGC as a proactive, strategic business partner.



HURON LEADS A GLOBAL CONTRACT MANAGEMENT SOLUTION

Huron's assistance to its global communications client began with an assessment of the current state of contract management. Through this effort, we identified numerous areas for operational improvement in the contract lifecycle management process. We also developed pricing estimates, staffing requirements, and proposed a detailed global rollout plan for multiple, simultaneous contract-related projects. We then documented prioritized requirements, and assisted in the development of a business case for the selection and implementation of an enterprise contract management system.

The project includes more than 200 stakeholders across four business units and five international regions, data conversion involving more than two dozen legacy contract management systems and integrations into multiple corporate systems such as product master, pricing master, customer master, and Lightweight Directory Access Protocol (LDAP). We helped navigate the system selection process and managed the conversion of more than 50,000 contracts (hard copies and electronic) into a global contract repository. We have also documented, consolidated and re-engineered (where appropriate) the contract workflow and processes throughout the corporation.

We are currently driving the global implementation of the sales-side contract management system.

