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In today’s economy, private and public organizations face myriad, complex laws and regulations. A process designed to detect and prevent potential regulatory compliance failures is vital; however, such an effective process cannot succeed without development of a strong compliance and legal risk management culture.
How can you prove fault? Certainly, your perspective on fault would form on such factors as the credibility of the drivers, the statements of any neutral witnesses, physical evidence, the police report, etc. Perspective is, essentially, defined as the faculty of seeing all relevant data in a meaningful relationship.¹

The concept of risk management in the contract management context is nothing new. Indeed, the Contract Management Body of Knowledge (CMBOK) acknowledges the significance of risk management when including it in the potential mission statement of a contract management organization, particularly with this statement: “Contractual issues and risks are anticipated, avoided, or mitigated (if possible) and appreciated in making business decisions.”²

What is changing, however, is the perspective on the importance, and inevitably, the intrinsic value of contract risk management to an organization. Due to changes in technology, globalization, increased regulation, and other compliance-related requirements, contract risk management is garnering more prominence in all kinds of organizations and industries, even within the start-up community.³

British law professor Richard Susskind describes this changing climate by stating that “tomorrow’s legal world...bears little resemblance to that of the past.”³ Susskind concludes that the “more-for-less challenge” is a major force driving change in how legal-related services are provided.³ The “more-for-less challenge” is the concept that most everyone in the legal camp is familiar with—that is, less resources and increased legislation and regulation will place more pressure on attorneys, contract managers, and other legal professionals.⁴

So, what does this mean for the contract manager? It means that the contract manager will see an increase in demand to help tackle contract risk management from his or her own organization.⁵ Yet, how does one successfully tackle contract risk management in an organization that has a traditional “silo” approach? As we all know, contract management impacts several areas within an organization and significantly influences that organization’s operations. Indeed, for some organizations, the complexity of their projects means that every contract could affect literally thousands of employees. Today’s demands mandate an enhanced level of communication amongst an organization’s departments. Given the many hats contract managers must wear, including an increasingly larger contract risk management role, contract managers can be a bridge in their respective organizations to ensure that necessary communication occurs, helping to provide perspective to senior management on the organization’s contract risks.

**What is Contract Risk Management?**

Contract risk management is an essential component of managing the legal risk of an organization. The crux of legal risk management is the process of analyzing an organization’s exposure to risk and determining how to best handle such exposure through identification, assessment, and prioritization. Legal risk management is vital to an organization’s success. Therefore, an organization cannot be successful without effective contract risk management.

Usually, contract risk management consists of contract risk evaluation, as well as other data analytic services to enhance third-party risk management and contract compliance. Typical factors in contract risk management may include the following:
Other Contract Risk Management Considerations
The previous list of factors certainly contains many items that are necessary to consider. Yet, there are other factors necessary to consider, as well, in order to have effective contract risk management.

To be successful in a given business endeavor, business leaders must communicate with others. In *The Leadership Challenge*, the authors, who studied many organizations and their leadership, state that leaders must listen to the people closest to the work, since that is where innovation comes from. Handling problems is a team effort, and a successful leader removes organizational boundaries, encouraging everyone on the team to take initiative. The “silo” mentality, in the authors’ view, blocks an organization’s progress, which in turn makes others in the organization feel they do not have a stake in accomplishing the organization’s overall objectives.

The Risk Management Society in 2014 presented its findings on the entire risk management attitudes (including contract risk management) of different stakeholders. Not surprisingly, different stakeholders had different attitudes. Investors tended to be risk-seekers, customers and rating agencies tended to be risk neutral, while employees and suppliers tended to be risk averse. Attitudes in this risk management context shape perspective on what an organization’s current situation is and what needs to be further achieved.

Understanding, then, the importance of communication and what the different perspectives are of various stakeholders in an organization, the next question is, what else needs to be considered in order to improve an organization’s contract risk management capabilities?

Many organizations have used a traditional form of what is generally known as “enterprise risk management” (ERM) in the attempt to improve risk management capabilities, including the handling of contract risks. ERM programs purport to focus on identifying, measuring, and reporting on an
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The shortcoming of ERM is that it does not meet the goal of increasing the certainty that the organization’s objectives, including contract compliance, will be achieved with a tolerable level of risk to the organization’s senior management and its board. To improve handling of entity-threatening risks, the National Association of Corporate Directors presented six objectives that every board should be certain of:

- That the risk appetite implicit in the company’s business model, strategy, and execution is appropriate;
- That the expected risks are commensurate with the expected rewards;
- That management has implemented a system to manage, monitor, and mitigate risk, and that system is appropriate given the company’s business model and strategy;
- That the risk management system informs the board of the major risks facing the company;
- That an appropriate culture of risk-awareness exists throughout the entire organization; and
- That there is recognition that management of risk is essential to the successful execution of the company’s strategy.11

Any risk management process using ISO 31000 includes the following:

- Establishing the context,
- Identifying the risks,
- Analyzing those risks,
- Evaluating the risks, and
- Treating those risks.

The end goal is to ensure that all stakeholders have access to certainty, which requires visibility and transparency on all contracts across the enterprise and beyond the organization’s firewall.14

**“Boards and management must reconsider their traditional risk approaches and demand better information to help them achieve the organization’s objectives.”**

Boards and management must reconsider their traditional risk approaches and demand better information to help them achieve the organization’s objectives. The crucial point here is that contract managers are in the prime position to better inform their respective organizations.

A more balanced approach to handling risk is found in the International Organization for Standardization’s (ISO) 31000, which, essentially, is a set of principles and attributes of effective risk management.12

ISO 31000 defines risk as the “effect of uncertainty on objectives.” Thus, risk arises only when an organization sets out to achieve something. Risk can be internal or external, and risk may cause an organization to fail completely in achieving partly/wholly its objectives, or risk may lead to those objectives being obtained earlier and/or exceeded. Risk, therefore, is neither positive nor negative.

As seen from the previous discussion, contract managers have several more aspects to consider when helping to create, maintain, and improve contract risk management for their organizations. To better digest these considerations, let us take a look at some examples.
Identification of Risks
A good example to give here comes from the energy industry. Given that the energy industry faces a volatile global economy, multijurisdictional operations, joint venture projects, and differing scope of contracts, energy companies are challenged to make their contract risk management practices reduce as much as possible the inevitable complexity while prudently balancing the discovery of opportunity in the risks that arise. Thus, part of identification of risk comes from knowing its source. The other part of identification comes from understanding the areas where the lack of effective contract risk management has significant impact:

- The increasing complexity of energy projects, joint ventures, and related management issues;
- Increased risk and related costs due to multi-party projects governed by further restricting and demanding regulations;
- The ongoing talent crisis, which is straining experienced resources and forcing junior resources to undertake contract risk management tasks; and
- The need for enhanced collaboration on energy ventures to mitigate the aforementioned factors and to improve the future contract risk management process.15

How to Handle Those Risks
No matter the industry, no matter the type of contract, certain principles will assist an organization in improving its contract risk management.

- Entrepreneurs—Contract risk management principles can be effectively incorporated into the business planning of a start-up. Indeed, if an entrepreneur wants to be successful, the entrepreneur must:
  - Conduct ongoing identification of the most significant risks,
  - Prioritize those risks,
  - Implement strategies to mitigate those risks and turn them into opportunity (if possible), and
  - Efficiently monitor those efforts.

The key for the entrepreneur is in order to remain competitive and progress, the entrepreneur must understand the power of contracts and risk management. Even at such an early stage, an entrepreneur can include certain clauses in his or her contracts to reduce the risk of lawsuits, for instance.

- Regulatory Compliance and Codes of Conduct—Managing compliance responsibly and with predictability requires a process, which the contract manager is equipped to effectively assist with. Considerations could include:
  - Cataloging standard acceptable/unacceptable provisions,
  - Triggers for escalated review,
  - Identification of applicable contractual remedies,
  - Evaluation of alternative responses such as negotiation of terms, and
  - Assignment of responsibilities to identified personnel.

For companies doing business internationally, it is important that codes of conduct be in the native language of the country, reflecting country-specific information, legislation, and regulations. Additional explanations may be needed in instances where the organization’s practices and standards of behavior differ from the local culture.

Conclusion
Achieving contract risk management is no small task. Yet the contract manager is well-equipped to assist the organization in this goal. Contract risk management is an organization’s objective; not to be viewed as a hindrance to an objective. CM
ABOUT THE AUTHOR

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ENDNOTES

1. Definition of perspective, Merriam Webster Dictionary.
3. See, e.g., the discussion of legal risk management in Bagley et al., The Entrepreneur’s Guide to Business Law (Cengage, 2012): 3-4, describing how entrepreneurs can use legal tools such as contracts to provide protection at the early stage, thus, increasing realizable value.
5. Ibid.
6. Ibid.
7. Professor Susskind addressed the State Bar of California in April 2014 and described that new jobs in the legal project risk management and legal risk management arenas would emerge for legal professionals (see http://calbarjournal.com/April 2014/TopHeadlines/TH1.aspx).
13. Ibid.
15. Derived from PennEnergy and OpenText, “Reduce Risk and Manage Change Throughout the Contract Lifecycle” (www.opentext.com).