Corporate Counsel Business Journal
May ■ June 2019
ccbjournal.com

CCBJ

Leverage a Process-Driven Contract Lifecycle Management Method

▸Ryan Drimalla, Managing Director at FTI Consulting, discusses the importance of process-driven contract lifecycle management, including how technology can help boost both transparency and efficiency.

CCBJ: What are the most common contract lifecycle management issues faced by corporations?

Ryan Drimalla: Some common difficulties arise when different business units are using different systems and protocols for contract management. This results in inefficient practices and reduced visibility by top management. Another common challenge is when a contract universe is not searchable and analysis across contracts is either not possible or not enabled by data practices. This creates an inability to track contract utilization, obligations, expires and renewals, which can lead to revenue leakage, missed cost savings, and can even result in noncompliance with regulations. A third issue is contract storage and retention that is either decentralized or inconsistent, which potentially results in broken or partial contract relationships. So you might have base agreements that are separated from their related amendments or other ancillary documents.

How can M&A activity or change management events affect contract populations?

Take, for example, an organization that has undergone a series of acquisitions. You can imagine how disorganized the resulting contract population might be. Different entities come in with their own processes and methodologies for managing contracts, which inevitably creates a very siloed effect. Not to mention the purely physical aspects, where each of the suborganizations maintain their contract populations entirely within the walls and systems of that entity.

What are some of the risks associated with leaving contracts disorganized? And what steps can organizations take to improve their contract processes?

For starters, you'll find yourself ill prepared to respond to or proactively act on any number of organizational challenges and initiatives. These could be things like evaluating or implementing acquisitions, divestitures or other corporate transactions. It also inhibits your ability to respond to regulatory changes to ensure your contracts comply with new rules.

You need to understand what you currently do well and – more important – what you don't do well. The first step toward improving the process is creating criteria for your contract lifecycle practices and then performing a formal assessment. The assessment should be broken down into a number of processes for evaluation (we typically recommend no more than 10). Once your processes are defined

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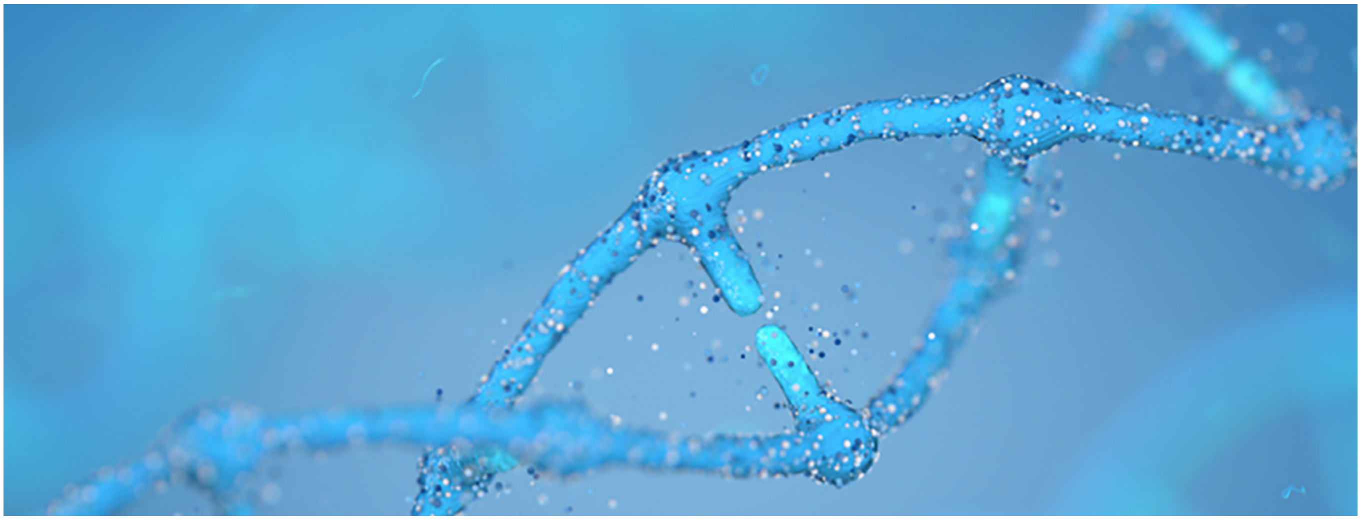

for evaluation, you need to provide some guidelines around how you rank those processes. That's typically done according to maturity levels, where the lowest score represents the least advanced practices and the highest represents the most automated and integrated practices.

What are some of the technologies available to organizations to support contract lifecycle management? What role can artificial intelligence (AI) play in contract optimization?

Processing technology to convert contracts to a machine-readable form is a big one, as is content analysis and extraction technology. Document review technologies exist for carrying out large-scale analysis and diligence efforts. And there are document or contract management systems, of course – often referred to as CMS – to facilitate renewals and responses to obligations. There is also draft-generation technology that allows you to create new contracts as templates and then edit them, which streamlines the contract request and negotiation process.

As far as the role AI plays, a good example is using software to recognize and extract certain clauses across a large population of contracts, based on just a sample of contracts. This type of technology can help organizations quickly identify relevant contracts or even expedite the review of contracts when required – whether it be business folks needing to access commercial terms and obligations, or legal needing to perform some kind of risk review. AI can also be relied on to assist with drafting and negotiation processes by proposing certain contract templates or fallback language, based on an algorithmic understanding of contract request criteria, or even by recognizing certain counterparty positions and understanding how to respond to them.

What type of regulatory changes will affect corporate contract management practices in the near term?

The last major regulation in this area, which many organizations are still dealing with, is the GDPR, which impacted privacy and data requirements and contracts throughout Europe and beyond. More recently, California signed into law its own set of privacy regulations that are very similar to those imposed by the GDPR.

Apart from privacy regulations, you also have the new lease accounting standard, which has versions that apply both in the U.S. and in Europe. It requires many organizations to reassess and reclassify their leases and other contracts for accounting purposes.

In terms of upcoming regulations, the big one on the horizon is the Financial Conduct Authority's transition away from use of LIBOR interest rates. The changes are anticipated to require organizations, especially big banks, to identify and segment relevant debt product contracts and to assess required fallback clauses and potentially respond with repapering the contracts. ■