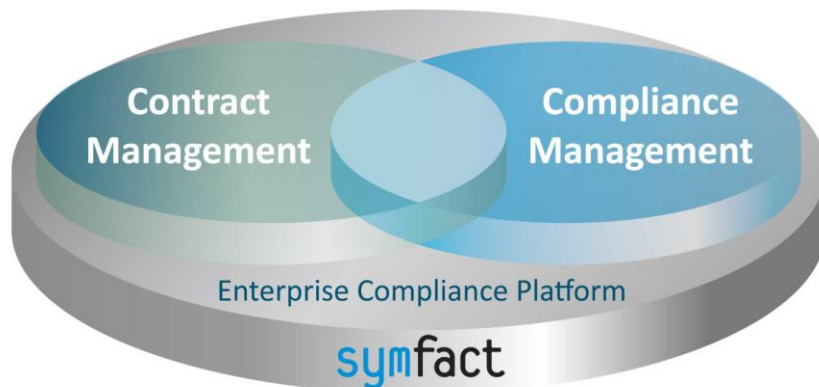
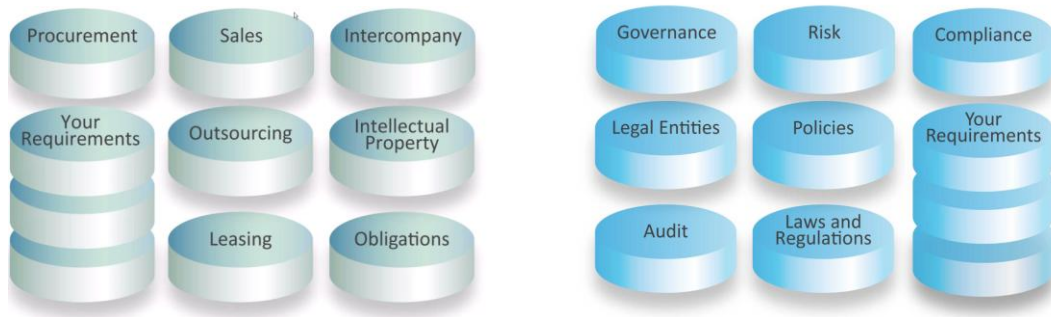


# Business Drivers of Contract and Compliance Management.



## Contents.

Contents.....	2
Executive summary.....	3
Alarm bells ringing. ....	3
Increasing regulation. ....	4
The need to manage risk exposure.....	4
Money “left on the table”.....	5
A company can have only one reputation, protect it.....	5
The extending role of the General Counsel.....	6
In-house legal or external law firms. ....	6
Litigation and dispute resolution.....	6
Contract Lifecycle Management.....	7
Key parameters when selecting contract and compliance management solutions. ....	9

**” Organizations which manage their contracts and compliance effectively will be at a tremendous competitive advantage.“**

Tim Cummins, Director IACCM (International Association for Contract and Commercial Management)

## Executive summary.

80% of all business to business relationships are governed by contractual agreements. These agreements may be termed deals, loans, insurance policies, licenses, leases, intellectual property rights, warranties, terms and conditions, agreements, projects etc. Company management has to manage business relationships effectively and efficiently, ensure compliance with all regulatory requirements and minimize risk exposure.

Modern ERP solutions (Enterprise Resource Planning) such as SAP, Oracle, Microsoft Dynamics, QAD, Epicore, Lawson, J.D. Edwards etc. are mature applications which provide management with a view of what **IS ACTUALLY** happening across an organization. However as the contract information is held outside the ERP then it is difficult for managers to compare actual performance with contractual requirements for delivery, quality standards etc. or in other words what actually **SHOULD** be happening across an organization and with its external market relationships. ERP solutions generally do not provide this document centric visibility and were never conceived to do so.

Moreover despite rigorous and extensive involvement by General Counsel during negotiation of agreements they may not subsequently be directly involved in ensuring their effective implementation. The result is a potentially disastrous risk exposure for the corporation.

Management is also responsible for delivering shareholder value. Corporate valuations are primarily based upon balance sheet values and profit and loss accounts but these are retrospective or lagging indicators. More relevant leading indicators of corporate value based on future revenues and profits can only be readily determined by extracting the relevant information from contractual and compliance documents. These provide access to more meaningful criteria such as risk exposure, intellectual property value, brand awareness, etc.

## Alarm bells ringing.

As mentioned above an in-house General Counsel or legal department may spend weeks or months negotiating the fine detail of a contract. It is rare however for this department or individual to then be involved or responsible for the compliant implementation of this agreement. For example a VPA (Volume Purchase Agreement) may be left in the hands of a buying department which was not involved in the negotiation activities or perhaps other international locations which could potentially benefit from negotiated discount levels are never made aware.

Many companies have a divisional focus rather than enterprise-wide basis for contract and compliance management. It is actually reported that over 80% of companies cannot even

locate a contract when needed. This clearly renders impossible any proactive commercial relationships with partners, customers or vendors. Divisional "islands of information" also restrict the organization's overall visibility to risk exposure and potential dangers.

The contract drafting processes within most organizations are essentially manual and based upon Microsoft Word, Excel, e-mail and telephone. The resulting process typically takes many weeks or even months delaying deal closure and prompt revenue recognition.

Effective contract and compliance management enables improved risk management and greater extraction of value from commercial relationships.

## **Increasing regulation.**

Recent studies have shown over 75% of respondents to be observing increased regulatory activity with over 65% citing "conducting investigations" as a prime focus of regulators.

Areas that are attracting increased focus include money-laundering, insider-trading, breaches of anti-trust law, bribery and corruption, stock market disclosure and breaches of directors and officers duties. For example with the recent UK Bribery Act 2010, organizations are now more concerned about bribery and corruption than they were five years ago due to both increased regulatory focus and increasing activities in emerging or risky markets.

## **The need to manage risk exposure.**

The modern business environment is forever driving the number and complexity of contracts ever higher. Unfortunately organizations are still trying to manage contracts and compliance in a fragmented, manual and ad-hoc manner. The results are excessive risk, lost revenue and higher costs. Risks are not visible and so are not managed. Visible risks can be acceptably managed and priced correctly and unacceptable risks, once recognized, may be mitigated, passed on or insured against. Contract risk management has external drivers such as regulatory authorities and internal drivers such as internal management. In all cases the aim should be to avoid contract penalties or catastrophic events.

Company officers are being increasingly held personally accountable should negative unforeseen circumstances strike a company's operations. Thus board members are increasingly demanding information systems which provide capture of relevant, reliable and up-to-date information.

Third parties are increasingly demanding visibility and audit trail records of contracts as part of their own risk management and/or regulatory reviews.

Risk management is not simply a departmental issue. It is an enterprise-wide concern. For example---. Which of our global contracts now need to be reviewed because our standard pricing and non-compete clause has been deemed unfair? ”.

Good risk visibility and proactive risk management enables an organization to pre-emptively respond to changing events and empowers effective and commercially beneficial renegotiations.

## **Money “left on the table”.**

Typically the most rapid and significant return on investment from implementation of a contract management system is obtained simply by taking control of existing contracts. For example a company may have negotiated global volume discounts through their subsidiary in North America however their London office was never made aware of these negotiations. As such they will again negotiate locally from a much weaker position and will not obtain the most beneficial levels of discount.

Over and above an inefficient and ill informed negotiation position very often established contracts with volume discounts are not correctly applied. Employees across the organization may be unaware that a certain breakpoint in pricing discount has been reached and will continue to purchase at the previous higher price level. Such simple organizational inadequacies can leave real money on the table which if corrected immediately goes directly to the profitability line of the enterprise.

## **A company can have only one reputation, protect it.**

What constitutes a company's reputation? What is the value of this reputation? How much of this reputation is based upon intangible assets?

A loss of corporate reputation is viewed as one of the greatest risks to the modern enterprise.

Corporate reputation is based upon an image formed from a sum of experiences. It may take decades to form but only days or perhaps even hours to destroy. A company's market value is driven by its anticipated earning potential i.e. the net present value of its future economic profit. Thus any unforeseen risk event which negatively impacts a company's perception or reputation may immediately impact materially its corporate valuation and stock price.

Not only must a company directly protect its own reputation but it must also have sufficient visibility into its relationships with commercial partners in order that they are not allowed to operate in a fashion to negatively impact and destroy years of effort and investment in reputation and brand positioning.

## **The extending role of the General Counsel.**

The General Counsel is being perceived as having ever increasing value within an organization's senior management. There is an increasing number of General Counsels working at the executive team level and holding board positions. These observations seem true irrespective of an organization's size.

As a first contact for legal, regulatory or risk exposure advice the vast majority of employees will take contact with the internal General Counsel rather than external advisers or other senior management. For their part General Counsel are accepting this trend and now expect to be the prime point of contact for such issues. General Counsel's increasing responsibilities include: strategy development, subsidiary management, control of ethics or whistle blowing, risk management and regulatory compliance.

The result of these increased responsibilities means the General Counsel roles now have greater influence over the strategies and operational practices of the modern enterprise.

## **In-house legal or external law firms.**

Outsourcing legal work may be driven by the need for specialist expertise, additional resources at times of high workload, and any particularly high complexity needs. There is now however a slight decrease in the amount of legal work being outsourced. Outsourced legal resources are however typically managed and influenced by in-house General Counsel.

Concerning cooperation and alignment with regulators it also seems increasingly prevalent that the in-house General Counsel rather than external lawyers accept this prime responsibility.

## **Litigation and dispute resolution.**

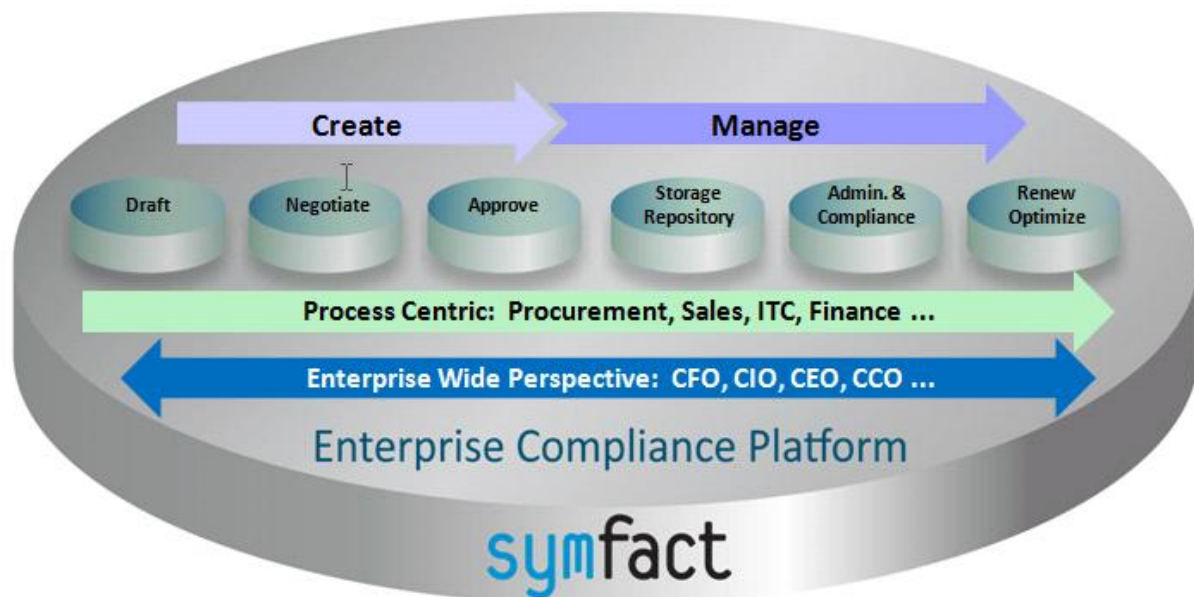
As the saying goes: good fences make friendly neighbors.

A contract's prime intent is to smooth and optimize the cooperation between two or more commercial partners whatever the nature of their cooperation. However should that

cooperation have difficulties at any point then the contract will be the document of reference for any obligation or dispute resolution.

Commercial and regulatory disputes are increasingly being resolved by negotiated settlements. With typically over 70% of legal disputes resolved out-of-court and judicial determination being required for less than 15% of cases. It is clear however that for both judicial and negotiated settlements the party with the most accurate and proactive access to data and documents will be best placed to succeed and negotiate or conclude a beneficial resolution.

## Contract Lifecycle Management.



Contract Lifecycle Management consists of support for the complete end-to-end processes of contract management. This is shown above.

Typically a request for a contract will be made by an individual within the organization. This individual may provide only a high-level subset of data for the contract but will be sufficient for its submission to be accepted and reviewed. This request will then be handled by a responsible General Counsel who will then control the process moving forwards. The initial requestor may then be asked to submit full contract information and perhaps partner information from an existing partner database within the organization. The General Counsel, once comfortable with the submitted data, will request generation of the draft contract based upon previously used

templates and clause libraries. Alternatively a new contract may not be based on a company's own legal paper but may in fact be based on a standard template provided by the other contracting party.

This initial draft document will then be required to follow a negotiation and review workflow where the concerned parties may be either internal or external to the organization.

Once negotiation processes are complete then senior management approval and signature are often required. At this point there are typically two requirements. Firstly that a summary document is available as senior management may have neither the time nor interest in reading a complex contract in its entirety and secondly significant travel obligations of senior management mean that approval via a mobile device such as iPad or Smartphone would be beneficial.

Once signed, a contract in many cases is passed from the legal department to another department for its post signature implementation. This is often the weak link in the chain and arduously negotiated benefits are actually never properly implemented.

The above scenarios are unfortunately in many cases manual exercises but all are ideally suited for automation. The post signature phase significantly benefits from automated support from an IT solution which provides a web-based, secure, transparent environment with date and event driven alerts and powerful searching and reporting. In fact it is this post signature support which typically provides the most rapid and significant monetary return on investment of any initial contract management implementation.

## Key parameters when selecting contract and compliance management solutions.

1 - Focus on the repository. Having existing contracts transparently available across the organization with proactive alerts and reports will ensure the most rapid acceptance of the system across the organization and perhaps most significantly the most rapid and recognizable return on investment. Success in this area is then the basis for extension across the organization and to greater contract Lifecycle support such as authoring and negotiation.

2 - Your requirements are specific to your company. Your organization has its own specific contract types, templates and processes to support. It is critical to select a platform which offers high configurability which is not only rapid and cost-effective for immediate deployment but also supportable and maintainable into the future as the vendor's platform progresses through successive releases.

3 - Start small, think big. You may only initially be planning on automating one type of contract. This focused approach is correct however ensure that the platform selected is able to support all contract and compliance requirements across your complete enterprise well into the future. It should not only address your immediate contract management requirements but also other document centric data management domains such as compliance management, intellectual property management, management of corporate structures, lease management, laws and regulations and GRC (**G**overnance, **R**isk and **C**ompliance) requirements.

4 - Ensure it has support for multilingual, multicurrency and multi-locale operations.

5 - Ease-of-use. Do not be forced to fit your operations and management requirements into any IT vendor's particular platform structure. Doing so will at best generate significant training requirements and at worst user frustration and poor system usage. Select a solution which will adapt and configure to your needs.

## Americas

### HQ – Chicago

200 S. Wacker Drive, 15th Floor  
Chicago, IL 60606  
+1 847 380 4174  
[us@symfact.com](mailto:us@symfact.com)

### San Francisco

730 Montgomery Street  
San Francisco, CA 94111  
+1 415 287 0760  
[us@symfact.com](mailto:us@symfact.com)

### Boston

420 Broadway  
Cambridge, MA 02138  
+1 617 401 7878  
[us@symfact.com](mailto:us@symfact.com)

## EMEA and APAC

### HQ – Switzerland

Pavy 12  
CH-1786 Sugiez-Bern  
+41 26 673 9000  
[info@symfact.com](mailto:info@symfact.com)

### London

Box 271  
UK-London EC3R 7DD  
+44 207 193 6739  
[uk@symfact.com](mailto:uk@symfact.com)

### Stockholm

Box 2881  
SE-18728 Täby  
+46 8 792 2580  
[nordic@symfact.com](mailto:nordic@symfact.com)

### Paris

198 Bd St-Germain  
F-75007 Paris  
+33 6 118 65215  
[france@symfact.com](mailto:france@symfact.com)

[info@symfact.com](mailto:info@symfact.com)

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