



Technology-Driven Approaches for Contract Analysis in M&A

Commercial and Contracts



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Many companies manage thousands of contracts across vendor, customer, and other relationships. In mergers, acquisitions, and other business transactions, companies often rush to understand existing contractual terms to minimize transaction risk and maximize the value of the deal. However, costs can swell, not only because of the tight timelines that often accompany these transactions, but also the demand for highly accurate and reliable results.

Pre- and post-transaction contract analysis can help companies evaluate the target's financial position, fulfill notice and consent requirements, and understand and mitigate risks within agreements. It can also help reduce exposure to stranded costs and streamline business integration.

However, many legal teams struggle to locate and identify their full contract database across disparate storage repositories. Many also continue to rely on time-intensive manual processes for reviewing these documents. At the same time, in-house counsel are expected to support a steady flow of deals, and reviewing contracts for those transactions can put a real strain on internal resources. This article covers:

1. The challenges of collecting and reviewing contract documents under the time pressure of an impending transaction.

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2. Solutions for streamlining the review process itself.
 3. Strategies for taking action based on the findings of the detailed analysis.

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Finding contracts across the company

The process of identifying the agreements that need to be reviewed can be as time consuming as the review itself. Even when a company has a contract repository, it is rarely complete. Instead, contracts can be stored across dozens of potential locations, many of which may be unknown.

In an informal poll of in-house counsel — among whom 50 percent have worked on at least six deals and 20 percent have handled more than 20 — 70 percent said they had a central repository, but also said their contracts were stored in other places, like repositories unique to each geography in which the business operates (11 percent), local share drives (37 percent), individual computers (17 percent), hard copies in file rooms (five percent) or were missing entirely (11 percent).

This dispersion creates several pain points in collecting contracts for review, including:

- **Delays** caused by difficulty locating documents.
- **Inconsistent repositories** that stall or complicate due diligence.
- **Increased legal cost and wasted time** due to missing contracts or uncertainty over whether the version on hand is the final.
- **Reconstructing material terms** from institutional knowledge when the actual contract cannot be located.
- **Poor organization** that undermines the credibility of the target company or leads to adjustments to deal value or retention of risk through indemnities or other financial commitments.

Creating structured, well-maintained repositories in advance can speed up due diligence and reduce the risk of missing or incomplete documents. Sellers should start the collection process early and

will benefit from conducting internal contract diligence before going to market to ensure they have time to fill gaps. Setting documentation standards and keeping them current helps avoid last-minute scrambles. Additionally, contract lifecycle management systems can reduce the time and effort involved in organizing agreements.

Sellers who start early, identify gaps, and focus on the contracts that drive business value are better prepared and present a stronger picture to buyers. Planning for common challenges like multiple versions, scattered amendments, inaccessible electronic files, or physical documents that need digitizing will help keep the entire process moving smoothly and help the sellers look organized and prepared to potential buyers. Companies that are more prepared have a better chance of obtaining higher value in their transactions.

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Establishing the scope of review

The review phase involves extracting specific data points to progress the deal; and approximately half of the in-house lawyers polled said they already use a standardized list of baseline fields for their M&A contract reviews. These fields often include:

1. The title of the document.
2. The contract type and whether it is a main agreement or an amendment.
3. The name of the internal company entity and counterparty entity.
4. The effective and expiration dates.

Capturing this metadata helps determine whether the document is in scope for further analysis and review.

Beyond this foundational metadata, the review must address strategic areas that stand to impact deal risks and valuation, such as:

- What impact the contracts have on financials and the quality of earnings, including recurring revenue, deferred revenue, pricing structures, payment terms, termination fees and non-standard pricing arrangements.
- Key commercial terms in contracts with top suppliers or customers, such as purchasing obligations, most favored nations clauses and exclusivity.
- Restrictions on assignability or change of control.
- Confidentiality restrictions that limit ability to disclose contract terms.
- Termination clauses for both parties.
- Intellectual property protections, ownership and residual rights.
- Liability limitations, indemnities and risk allocation provisions.
- Industry-specific regulations or other compliance obligations.
- Business continuity and resilience against potential risks and force majeure events.
- Consolidation and supplier optimization.
- Commercialization rights, intercompany rights and restrictive covenants that affect the ability to run the business after closing.

Efficient review processes

Given the potential depth and breadth of contract review, legal teams need approaches that reduce time, cost, and risk. One place to start is assessing the resources available to support the work. Experts have noted that as many as 88 percent of companies will have in-house legal teams and outside-counsel working in tandem on contract reviews, while only nine percent are incorporating alternative approaches that help reduce time and cost.

With an expanded bench that includes contract analysis experts and technology, companies can

assign the right level of resources to the right task. For example, high-risk, low-volume tasks (e.g., complex review of strategic master agreements) should be handled by senior attorneys and subject matter experts, while low-risk tasks (e.g., capturing basic information from standard service orders) are suited for alternate support resources.

Another major driver of efficiency is the use of technology to automate parts of the workflow, as long as humans are kept in the loop for oversight, quality control, and validation. Technology-forward approaches include:

- Advanced keyword search uses structured search strings to find consistent text.
- Regular expression identifies character-based patterns rather than specific words.
- Fuzzy search finds text when keywords vary or are not exact matches.
- Logical rules automatically classify documents and populate metadata based on predefined logic.
- MD-5 Hash compares hash values to identify exact duplicates.
- Clustering/comparison groups similar documents and measures similarity, including against templates.
- Machine learning trains models to detect documents or text with similar or different characteristics.
- Large language models to extract, summarize, classify and generate text based on patterns learned from large datasets.

The cost and effectiveness of each approach vary based on the contract portfolio and scope of review, so selecting the right tool for the right task is critical. Tasks suitable for AI automation include identifying out of scope documents, prioritizing documents for review and extracting specific data points and clauses, yet most teams are not yet using AI in their M&A reviews. Regardless of the automation approach, flexibility is essential, as technology capabilities continue to change rapidly and the attributes of a deal may shift at various stages of a contract review.

For reviews involving upwards of 10,000 contracts, sampling is another effective approach. Sampling allows teams to test automation methods, understand their strengths and limitations and ensure that any AI workflows or other solutions provide accurate outputs.

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Taking action on findings

Once the relevant information is understood across the contract universe, legal teams need to determine the remediation and action paths required before signing, before closing and after closing. Necessary actions may include issuing notices, seeking consents, renegotiating terms, consolidating relationships, and splitting or terminating contracts.

One area where companies often struggle is migrating contracts of acquired companies after closing into a single repository. For example, when asked how successful they have been with integrating contracts of acquired companies into single repository, on a scale of one (completely ignored it) to 10 (completed smoothly for every contract) 57 percent of in-house counsel rated their efforts at a five or lower and only 13 percent rated themselves at an eight or higher.

To improve outcomes, legal departments can build scalable processes that maintain control over outcomes and risk areas, while ensuring actions are completed on time and with manageable costs. For example, a simplified remediation process that assigns specific roles to the business, in-house counsel and scaled support could include the following steps:

1. **Prepare:** The business provides input on the action plan; in-house counsel defines the decision tree and scaled support identifies the route for each contract based on data.
2. **Create:** In-house counsel defines templates and guidance for the playbook and scaled support generates the amendments, notices or consents.
3. **Outreach:** Scaled support sends documents to counterparties and follows up if they are unresponsive.
4. **Negotiate:** Scaled support resolves standard objections using the playbook, in-house counsel handles non-standard legal objections, and the business serves as an escalation point for commercial issues.
5. **Sign:** Scaled support finalizes agreements and the business signs.

Importantly, not all contracts need to follow the same workflow. Strategic workflows can prioritize top tier relationships and ensure the right stakeholders are engaged at the right times.

Conclusion

When experts and effective workflows are in place at the outset of a contract review, legal teams can keep a deal on track. By understanding the possibilities and limitations of advanced technology like AI, companies can make balanced decisions about the tradeoffs between cost, efficiency and quality at each stage of the deal. Readiness across people, process, and technology ensures the legal team remains in a strong position to add value to a transaction and support the business in achieving its strategic objectives.

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