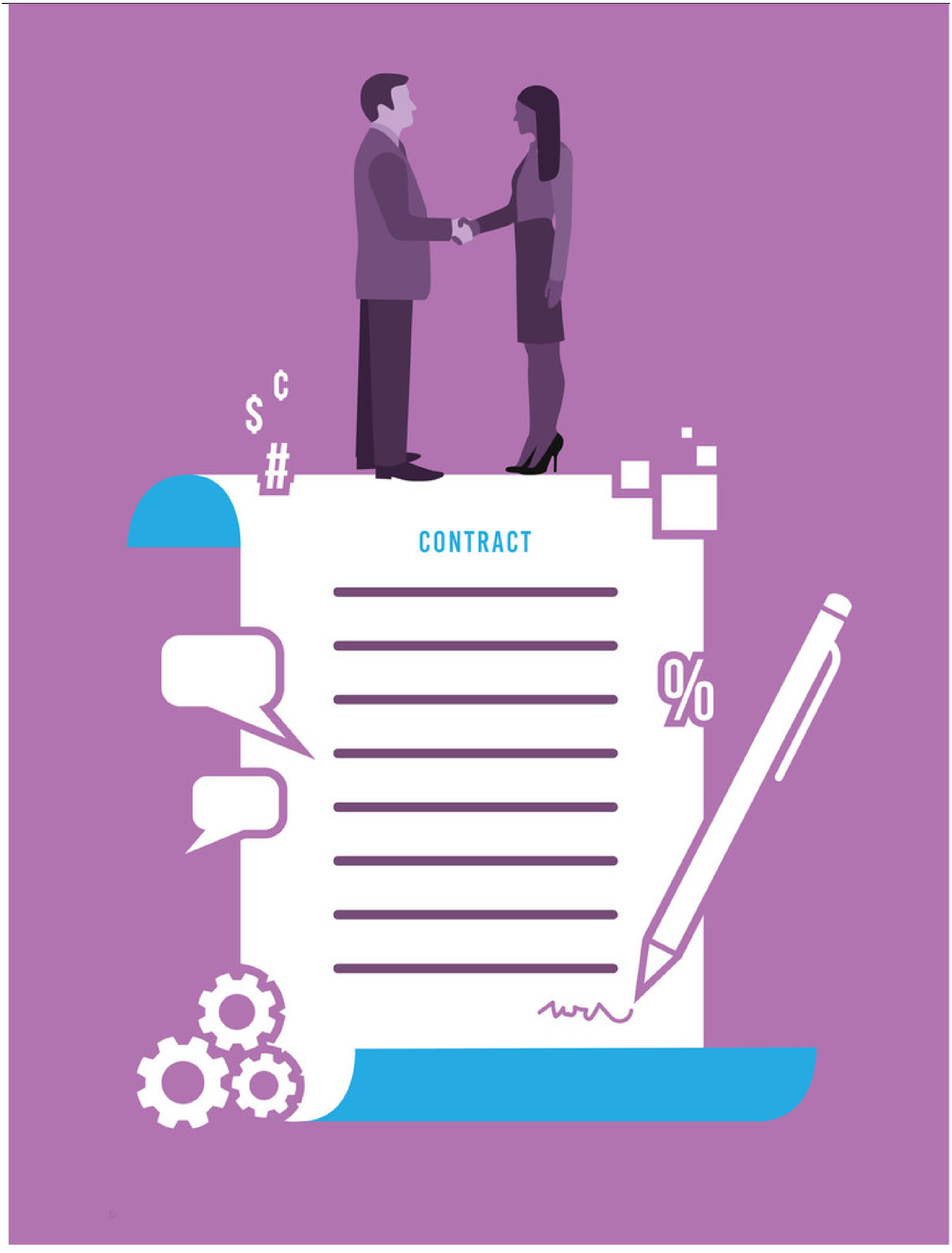
ACC DOCKET
INFORMED. INDISPENSABLE. IN-HOUSE.

Asian Briefings: Top 10 Considerations When Implementing a Contracting Automation Tool in Asia-Pacific

Commercial and Contracts


CONTRACT

One of the key ways the legal technology market in the Asia-Pacific region is different from the rest of the world is that the focus of in-house legal departments in Asia (particularly Hong Kong and Singapore) heavily tilts toward technology tools that support contracting. Where other jurisdictions may be focused on outside counsel management or matter management, the top priority of legal departments in Asia is getting their contracting processes under control. However, the state of the legal technology market at this point is that the different solutions on the market don't adequately explain how they differ from each other. This makes it harder for potential purchasers to make sense of the various solutions and find the best fit for their organisation and their budget. Below is some practical advice to help you think through the types of features you do — and don't — want to have in a contract automation solution before you start scheduling demonstrations with technology vendors.

1. Whose paper is it?

Contracts start with a first draft. But a critical question when deciding on a technology tool is which party gets to use their template as the first draft for the negotiations? If your clients, due to market power or other reason, can use their own templates as first drafts, then a contract generation and workflow automation tool is likely what you need. Sometimes, the counterparty to the contract provides the first draft of the agreement, and you are negotiating on someone else's paper. In this instance, if you are looking at contracting tools to assist your review and workflow, you are in the realm of artificial intelligence (AI)-based technology. AI in this case can serve as a pre-screening tool that will help flag issues and omissions in the counterparty's draft, which can focus your lawyers and improve your turnaround time. But that is only possible by using natural language processing (a subset of AI technology), and that is typically more expensive than a straightforward workflow automation tool that lacks AI capability.

Contracts start with a first draft.

2. Data entry or data duplication?

Some contracting automation tools have the user (e.g., you or someone in your company) manually enter the required information to generate a contract. However, most (if not all) of the information that is inputted into that first draft probably already exists in your organization — somewhere. One of the key benefits of automation is that it reduces or eliminates manual, repetitive data entry, which is both time consuming and prone to human error.

After all, if you already have basic information in some kind of electronic format (legal entity names, address, business registration information, basic business terms, etc.), then it should be possible to simply leverage this information to generate your contract seamlessly, without having a person copy and paste this data. Figuring out what information your organization already has and where it exists can save immense amounts of time when you are setting up your contract automation tool. It also allows you to ask the important questions about data integration and automation when you are in the early stages of reviewing technology vendors. Knowing what data you have and where it exists will ensure the tool you pick will get you the greatest amount of automation possible within the technology ecosystem you are already operating within.

3. Whose signoff is it anyway?

Do you have a complex matrix of internal approvers who all must sign off on a contract before it can be executed? Does this matrix depend on a mix of factors that include things like the overall value of a contract, the subject matter involved in the contract, the duration of the contract, and so forth? Once a first draft has been generated, for some companies, the work is just beginning. The question you should consider is whether the internal approval processes should also be part of the automation platform you are exploring, or if you want to take your first draft out of a technology platform and go back to “good old” email management for the approval process. Some technology in the market stops after the first draft is generated, while others continue well past that point in time.

> Do you have a complex matrix of internal approvers who all must sign off on a contract before it can be executed?

4. How do we negotiate this contract?

The way most lawyers learned to negotiate a contract was through sending drafts back-and-forth and comparing those drafts with a series of blacklines and redlines. For some companies, this approach to contracting is required because their counterparties are comfortable with this approach and highly resistant to change. However, other companies that are less constrained by “that’s how we’ve always done it,” may be able to negotiate on an electronic platform (think of something similar to Google Docs or Microsoft Office 365). There are lots of advantages to leveraging this technology. For example, if there are provisions that are a key area of focus for the finance department, a negotiation platform can make sure the department is automatically notified when those particular provisions are edited. A negotiation platform also streamlines the negotiation process and can dramatically reduce the amount of time to execution, particularly when negotiations are occurring across time zones.

5. Stand-alone or suite of agreements?

In certain circumstances, a contract may be a stand-alone document. For example, in sales or procurement, a single page may be the entire contact — even if it is not the entire commercial relationship between the contracting parties. In other circumstances, contracts may interrelate with each other. This may be because the terms of a memorandum of understanding (MOU) or letter of intent (LOI) may later translate into additional transaction documentation. Or, it may be that there is a master services agreement that is then referenced by later purchase orders or statements of work (SOW). Certain technology platforms can cross-reference data from one contract and automatically use it to populate later documents. However, not all systems have this capability. Before you consider which technology tool to invest in, you should create a comprehensive list of transactions you want supported by this tool as well as all the functions and processes that may be ultimately migrated to this tool.

6. Whose contract is it anyway?

Only legal professionals consider “contracts” an area. Most organisations think about the business goal they are working to achieve rather than the legal vehicle they are using to realize that end. Human resources think about employment, not contracts. Business development thinks about sales, not contracts. The same is true for procurement, facilities, and so on. For this reason, it is quite common that the contracting process is “owned” by numerous stakeholders and departments across an organization, rather than consistently and solely being owned by the legal department. When considering a technology investment, it is common to engage with many diverse stakeholders and build consensus across divergent viewpoints to understand all the necessary contractual requirements. Typically, other departments are happy to let the legal department take the lead on implementing the new technology (less work for them!), but that does not mean that you will be able to identify a tool that is fit-for-purpose without consulting all of these different departments.

Only legal professionals consider “contracts” an area.

7. Is it time to do less law?

One potential benefit of automated contracting solutions is that the legal department can use it as a vehicle to push out the knowledge that is typically only held within the legal department and make it more accessible to the entire organization, thus institutionalizing the knowledge. For example, if your company has a contract playbook with preapproved fallback provisions and negotiation strategies, there are contracting systems that can have this information coded within the platform. This allows a businessperson to confidently engage in negotiations without delaying a process by requiring a lawyer to manually review every document and every change. These same tools allow for escalation protocols and monitoring to ensure that the legal department maintains control and visibility over risks. However, this type of functionality comes with a slightly higher price point than its more basic competitors.

8. E-sign or wet sign?

Although it has taken some time, e-signature is now well established and common in North America and Europe. The same cannot be said for all jurisdictions in Asia-Pacific. While e-signature is common and well accepted in Australia, it is unacceptable in mainland China as it is still standard business practice that a contract should be chopped in China. In Japan, despite having an enabling statute to support e-signature, it is not commonly used because of a business culture bias in favor of wet signatures. In India, there is a federal e-signature law; however, there are many states that still require a paper contract with wet signatures for stamp tax and other purposes. In Singapore and Hong Kong, e-signatures are commonly accepted except by small or more traditional businesses. When considering contracting tools, some will have e-signature as part of their service while others will only support e-signature via integration with yet another technology platform (e.g., DocuSign). Thinking through your needs in this regard can greatly impact the price of the tools you consider as well as the ultimate implementation of the technology.

9. The contract has been signed — now what?

Does your organisation have a document management system? Are all executed contracts stored within that system? If that is a business requirement, it is important to ensure that the contract platforms you consider have the ability to integrate as seamlessly as possible with the existing document management system. Ideally, once the contract has been fully executed, the filing and storage of the document should be fully automated to prevent human error and to maximize efficiency. However, this automation may come at a cost. Some contracting tools go beyond just the formation of the contract and incorporate contract lifecycle features as well. For example, they may automatically remind key stakeholders that a contract is up for renewal, or that the window for cancellation has opened, or a key performance date is coming up, etc. This may or may not require the document to continue to be stored on the system that originally generated it, and thus integrations with document storage solutions may reduce functionality.

10. Contracting in the cloud or in the closet?

Companies across Asia-Pacific have taken differing approaches toward the use of cloud-based solutions to support their legal operations. All contracting technology tools in the market at present are available as a cloud-based solution. A subset of those vendors will also offer a local installation of their product. If your company requires that all technology be hosted locally on your own private IP servers (likely located in a closet in the basement), then you will be significantly limited in the tools that you are able to consider. A brief discussion with your IT department before you go to market can save you hours down the road.

Emily Foges

CEO

Luminance

Emily Foges is the CEO of Luminance. Foges draws on her 20 years of experience in innovative technologies and retail strategy and execution to help businesses develop product and growth strategies. Based in London, she’s previously worked for numerous global companies including Equifax and BT Retail and Betfair.

Emma Walton

Knowledge and Innovation Manager

Slaughter and May

Emma Walton has enjoyed an extensive career in private practice. Now, as knowledge and innovation manager at Slaughter and May, Walton is now focused on developing efficiencies for lawyers and helping legal departments embrace technological solutions