

Contractual challenges in the face of disruption

Our main focus during this COVID-19 crisis will be turned towards the health of our family, friends, employees and society as a whole. From a business perspective, however, COVID-19 is having an unparalleled impact on businesses. Organisations are faced with uncertainty and the need to focus on ensuring the viability and continuity of business and to identify proactive measures that can be taken in order to mitigate and manage their risks.

The paralysis of many business operations means that it is becoming harder for companies to meet the obligations of their existing contracts. With an impact on both buy-side and sell-side contracts, having a strong understanding of an organisation's entire contract inventory can help determine the risks and steps that can be taken to mitigate them. One such area is force majeure, used to protect companies unable to meet their contractual obligations due to events and circumstances beyond their control. ➔

Considering the extent of the contracts impacted, companies are likely to face a need to review contractual relationships they hold with customers, suppliers, contractors, insurance companies and employees. Such reviews may include the identification of applicable law, insurance provisions, contractual obligations related to delays in provision of goods and services and terms relating to failure to deliver in the event of a pandemic.

Key steps in risk mitigation

Businesses face increasing pressure to mitigate the impact of COVID-19. As a result, a diligent review of existing contracts may be necessary to minimise loss, protect the business and ensure continuity. In reviewing such contracts, businesses will be required to:



Identify contracts that may be impacted, focusing on areas of high risk such as contracts held with key suppliers. This may require the evaluation of your business' ability to alter suppliers in an effort to mitigate supply risk. This can help organisations move quickly in establishing secondary supplier relationships.



Understand and actively track relevant provisions. The provisions relevant to a particular organisation will vary based on factors such as industry, relationship type and contract type. As an example, force majeure – which provides for instances where an unforeseen circumstance prevents an organisation from fulfilling its contractual obligations – could be particularly relevant.



Determine the applicability and enforceability of clauses. Where clauses relating to the inability for an organisation to meet their contractual obligations have been identified there is a need to consider these in the context of COVID-19. This could include review in relation to governing law and identification of any notice requirements which will need to be carefully followed.



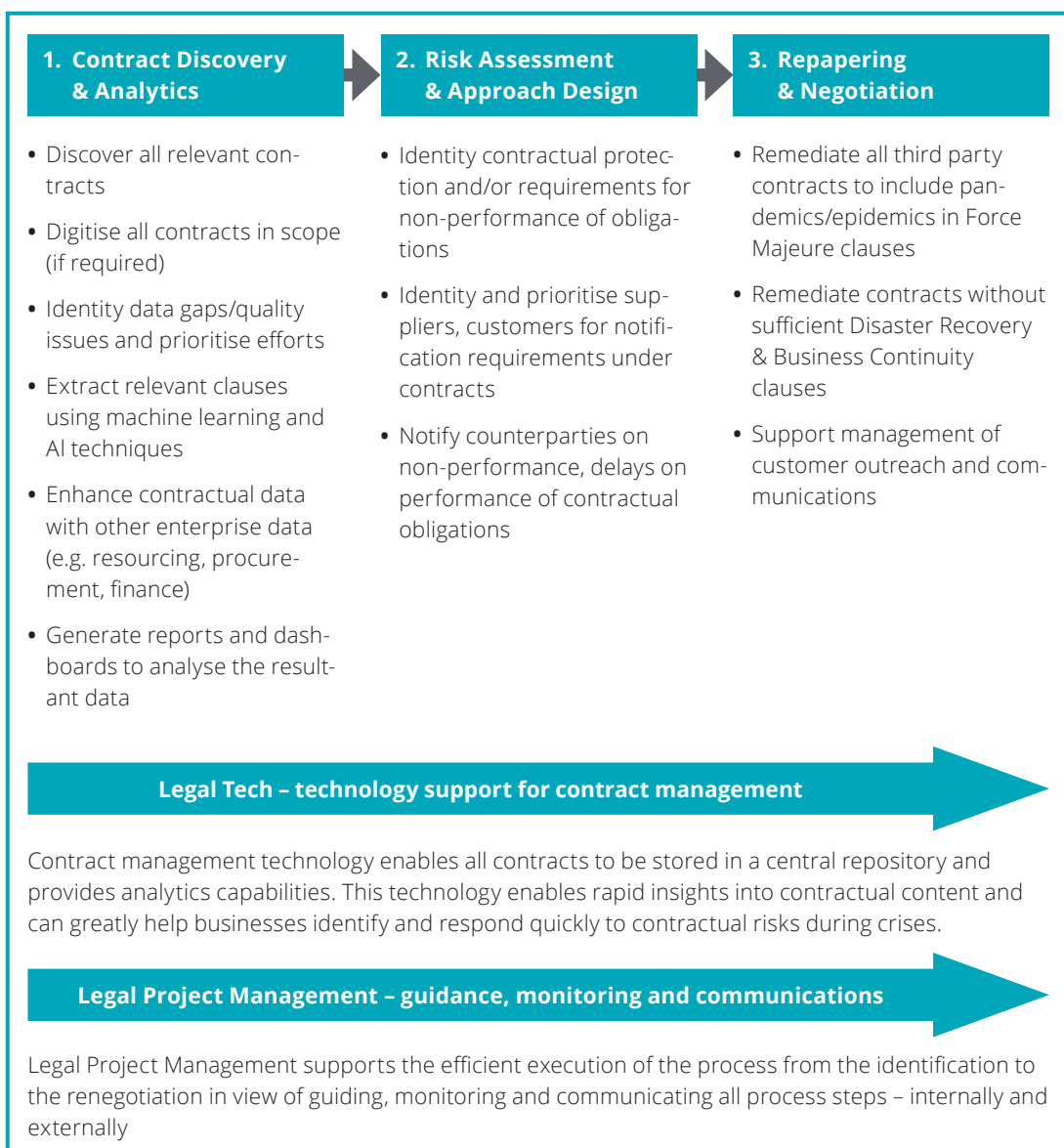
Renegotiation and action planning. Depending on the outcome of the review, organisations will need to take necessary action to mitigate risk and protect their business interests. Such action could include renegotiation or termination of the contract where the contract allows for it, potentially increasing the workload of those in business functions such as legal and procurement.

Accelerating preparedness

Organisations are tasked with the difficult challenge of identifying contracts within their business, extracting information from the contracts and combining contract data with business data in order to identify and mitigate operational and economic risks associated with pandemics, such as COVID-19.

These processes when performed manually are typically very time consuming and costly. In a situation where rapid insights into contractual and business data are required, technology can be used as an accelerator, enabling these processes to be automated and streamlined.

The three key areas that need to be addressed immediately by organisations include:



Your contacts



Johannes Passas

Partner
Tel: +49 (0)511 3075 593
jpassas@deloitte.de
Contract focus: Distribution networks



Andreas Leclaire

Partner
Tel: +49 (0)211 8772 3805
aleclaire@deloitte.de
Contract focus: Distribution networks



Felix Felleisen

Partner
Tel: +49 (0)211 8772 2553
ffelleisen@deloitte.de
Contract focus: Corporate Law, Real Estate Law, Dutch Country Desk



Dr. Michael Fischer

Partner
Tel: +49 (0)89 29036 8902
mifischer@deloitte.de
Contract focus: Corporate Law, Chinese Country Desk



Dr. Florian-A. Wesche

Partner
Tel: +49 (0)211 8772 4068
fwesche@deloitte.de
Contract focus: Energy Law



Klaus Gresbrand

Counsel
Tel: +49 (0)211 8772 2501
kgresbrand@deloitte.de
Legal Tech & Design – Contract Management



Kai Jacob

Partner
Tel: +49 (0)711 6696285
kjacob@deloitte.de
Legal Tech & Design – Contract Management



Ignaz Füsgen

Counsel
Tel: +49 (0)211 8772 5980
ifuesgen@deloitte.de
Legal Project Management – Contract Analysis and Implementation

Deloitte. Legal

This communication contains general information only not suitable for addressing the particular circumstances of any individual case and is not intended to be used as a basis for commercial decisions or decisions of any other kind. None of Deloitte GmbH Wirtschaftsprüfungsgesellschaft or Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte network") is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

Deloitte Legal means the legal practices of Deloitte Touche Tohmatsu Limited member firms, their affiliates or partner firms that provide legal services.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/de/UeberUns for a more detailed description of DTTL and its member firms.

Deloitte provides audit, risk advisory, tax, financial advisory and consulting services to public and private clients spanning multiple industries; legal advisory services in Germany are provided by Deloitte Legal. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's approximately 312,000 professionals are committed to making an impact that matters.