

A Systematic Approach to Streamlining Contracting Approvals

By Sumi Trombley, Senior Legal Operations Consultant, UpLevel Ops

Over the past 18 months, in-house legal departments and their client business organizations have felt the excruciating pain of highly administrative contracting processes as the COVID-19 pandemic forced businesses into remote working situations. The first reaction many organizations have is "HELP! Get me a contract lifecycle management system." The pain felt across the organization may mean priority for budget, so it seems like a no-brainer. However, in our consulting experience, when organizations faced the challenge of implementing these tools, they found that the real morass was their approvals process. For this article, I discuss a few recommendations to streamline your organization's approval process for a more successful technology implementation:

1: Survey the Legal team to quantify the high frequency and the high intensity/effort approvals. Start with the low-hanging fruit for quick wins, instant relief, and enterprise-wide buy-in. If your organization doesn't have an automated intake tool, identifying these complex approvals processes can often take the form of a spreadsheet tracker or anecdotal evidence. Either way, you'll know what these problem areas are because people talk about them. For the first phase, limit your process improvement focus to these high friction approval workflows.

2: Solicit feedback about what is problematic about the provisions from each approval stakeholder. The only way to fix what's not working is to find out why it's not working. Talk to your business colleagues. Don't assume the business undervalues your department's risk analysis on Limitation on Liability because they moan every time they hear those words. The opposite may actually be true. They might appreciate the advice and prefer that the lawyers stay in their lane on product/service pricing issues.

3: Develop a Clause Library: Consider what terms/parameters can be built into a template or added to make the stakeholder comfortable with the provision at issue. Build-in any potential mitigating positions to avoid unnecessary approvals from senior leadership. For example, if agreeing to late delivery penalties requires COO approval, will the COO be ok with a late delivery penalty if (1) you have an opportunity to cure before any penalty OR (2) there's an excused performance provision? If so, perhaps the COO's approval is only required if neither of those two mitigating factors are present. In addition to creating a faster time to execution, knowing these acceptable conditions can help you design the meta-data triggers for your CLM configuration.

4: Consider Materiality Thresholds: Consider at what level these approvals become immaterial and set thresholds for approval requirements within each commercial provision. For example, if you negotiated a \$1,000 contract with a 45-day payment term, does the business care? Does it require C-suite-level approval? The goal should be to get to an approval matrix with tiers that capture actual risk to the business.

5: Review vs. Approve: Consider whether the stakeholder needs approval rights for auditability and compliance purposes or whether they need to know the position to plan for the future. For example, does the Finance function need to approve a competitiveness obligation, or is this an operational concern? By streamlining the contracting roles and responsibilities, you can minimize the number of decision-makers. Each approver should feel free to consult with their peers to discuss the decision but keeping one or (max) two people accountable improves efficiency. It may also allow for changes in policy (i.e., single approver models empower organizations to hone in on the sticking points and improve the decision-making process).

6: Limit Legal Approval to Legal matters and terms (Intellectual Property Rights, Indemnity, Liability, etc.). Even within this family of terms, there may be some that are business decisions. Think about the terms where you explain the provision/risk to your business clients, and they say, "What do you recommend?" That should be the UNIVERSE of terms that Legal approves. Depending on your organization, this step may involve training the business on the legal considerations of your organization's standard positions. Educating your clients helps make your job easier because it arms your business clients with the knowledge to advocate alongside you.

7: Create Tiers of review within specific families of terms. For example, some companies have delegated authority to approve certain deviations to their standard Liability Cap provisions to mid-level managers and not senior leadership. Mirror this concept with other families of terms by incorporating the "Materiality Threshold" approach above. The results will be faster time to execution and an empowered team.

Conclusion

To summarize, a successful technology implementation hinges on a discrete, configurable approvals process. Taking the time to educate your business partners and collaborate with them to streamline the approvals process can free up critical resources, increase time to execution and bolster internal client relationships. Win-win!