

## Contract Management - Basic principles of a successful corporate manager

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The growing integration in Europe, the world-wide interconnectedness, new markets and new risks are leading to a complexity of organisational demands, reaching across many fields, being put on companies. To master and co-ordinate these demands calls for an increased strain and increased competence on the side of management.

Contract management as a basic principle of a successful corporate management is playing an increasingly larger role. The individual contract conclusion is not the only thing meant by the key word 'contract management', with which it is attempted as much as possible to assert the position of one's own company by exploiting the contractual freedom of formulation. A coherent and comprehensive contract management is necessary in order to meet the modern needs of corporate life and competition, to keep an overview at all times, and in order not to get bogged down in the individual items.

Successful contract management begins well in advance of the actual contract conclusion. It begins with the planning, which should be carried out in co-ordination with the concrete formulation of the contract, followed by the conclusion and the implementation of the contract up to the (often neglected) contract controlling.

In the planning phase the goals of the contract are set, possible risks and potential conflicts are looked into and the time frame is worked out. These typical management tasks should already take place in accordance with the concrete formulation of the contract, in which the bringing in of lawyers should be obligatory at this stage at the latest. For exactly the formulation of the contract raises legal problems on a large scale, which someone unfamiliar with law often does not see it all. The limits of the legal contractual freedom have to be plumbed and the goals of the contract brought into line within the framework of the concrete contract formulation- especially with regard to the modernised law of obligations, having been conformed to EC-law. Important here is the agreement with the available general terms and conditions of business, the decision with respect to the type of contract (Standard contract, Individual contract, framework agreement etc.) as well as the consideration whether European community law or International Private Law are possibly affected. Lastly, the written formulation of a contract also serves as the documentation for the agreements made, which are often underestimated with regard to 'fair salesman conduct' by the contract parties and which can lead to unpleasant surprises with conflicts. Some proceedings fail simply because oral agreements are disputed by the other party and presentation of one's case is not possible due to lack of witnesses or lack of written documents.

If the planned and formulated contract is finished, the contract management is by us means finished. Contract controlling is an important step as a sort of "post-calculation" during or after the contract implementation, which represents a valuable know-how, being not only retrospective but also especially future-oriented, to a company. For the critical examination of the implementation of a contract very often leads to an improvement of identical or similar contract projects.

At the same time good contract management should not only be limited to the original business of a company. Aspects of industrial law, company law, and tax law should not be left out, because here there are also contracts and contractual formulations which are closely linked with the actual business of the company. The same applies to the field of trademark law. In this way

certain tax advantages can be obtained or disadvantages from restructuring of company law can be compensated for with certain contract formulations. Contractual wage agreement provisions about working hours or the compensation of overtime pay can be obstacles to agreed delivery deadlines or can reduce their profitability. Dismissal protection laws and works councils can impede company restructuring.

The co-operation between management and lawyers and the interaction of the economy and the law are considerable cornerstones for a successful contract management. The change from the old law of obligations to the new one especially is leading to an increased need for legal counsel with the formation and implementation of business decisions of management and should be used as an opportunity to rearrange or restructure all contractual relationships of a firm. In addition to conforming to general terms of business current framework agreements or sales contracts must be examined or, if necessary changed; contracts still to be concluded will have to be, under certain circumstances, redesigned. For the new law of obligations brings changes mainly for companies in very sensitive fields. There are, for example, extended periods of limitation, increased warranty obligations and consequently significantly expanded consumer protection laws.

Here the warranty periods for sales and law on contracts for work and services, which have been extended to 2 years, must be emphasised.

These warranty periods are non-negotiable vis-à-vis consumers, and cannot be changed by terms of business either.

New is that the right of the customer to get things sorted out doesn't depend any more on the unfulfilment of repair or replacement requests by the supplier. According to the old legal situation the contractor of negligence had to be accused. From now on it is enough if the repair or replacement didn't take place within the legal timeframe, even if it's not the fault of the contractor that he can't keep the deadline. So after an unsuccessful setting of the deadline the customers can remedy the defect themselves or have it done and can demand from the contractor that they be compensated for the costs of doing so. The right of the customer to demand an advance for this repair from the contractor is now also anchored in law.

The regulation that the customer can in event of an effective withdrawal from the contract demand compensation for the possibly damage is new. According to previous law the customer only had the alternatives of conversion or compensation for damages. Henceforth the customer can, if the corresponding conditions are given, not only withdraw from the contract (which corresponds somewhat to conversion under previous law) but also demand additional damages. From now on the question of reimbursement of cost estimates is also regulated. The law assumes that a cost estimate is generally free of charge, if and as long as the contractor cannot prove that he had agreed to being paid for a cost estimate with the customer beforehand. Here it is to be noted that such an agreement on the reimbursement of cost estimates cannot be brought about by the general terms of business.

The documentation of contract management and the representation of the daily controlling thereof are independent elements of the formulation of an appendix to the balance sheet.

Here, taking into consideration the rating systems used by banks, positive reactions can be obtained when external contract management besides the reporting on human resources, which has been prepared by a lawyer, is reflected in the internal contract management, namely when formulating the employment law situation.