



How to review a contract

A step-by-step guide

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Reviewing a contract on behalf of your business can be a complex task. Not only can the documents be long, full of [legalese](#) and relate to sometimes unfamiliar subject matter, there is also the added pressure of not wanting to miss anything important that may leave your business compromised down the line.

In this article, we take you through the five key steps for reviewing a contract:

1. Check for **Accuracy**
2. Check for **Reasonableness**
3. Check for **Adequacy**
4. Extract **Useful Information**
5. Deal with **Review outcomes**



How To Conduct The Review

The contract review has several elements, which are listed below. The order in which you choose to conduct the following steps is up to you. For some, the preference is to take each section of the contract and run all five steps against it before moving on to the next. For others it's easier to work on each step in turn for the whole contract. Over time, you'll develop your own preference for how to do this.

Issues or concerns found during the review could either be identified:

- Directly in the original documents using mark-up mode or a commenting function
- By entering the details into a standardised issues template/form that captures the document name, issue location, issue details, any proposed changes to remediate the issue, plus an area for the supplier's response.

1. Check for accuracy

A contract and/or its associated documents may have been handled by a number of people over time, with varying skill levels and knowledge, developed using cut-and-paste techniques using various other documents, prepared in a hurry, and so on.

Mistakes are easy to make and overlook, and can occur within a clause, within a group of related clauses, within a document or between documents.

There can be many types of inaccuracy discovered, and some of the most common include:

A. Ambiguity, where a word or phrase in a statement can have different meanings

B. Arithmetic, where a calculation or formula is incorrect

C. Contradiction, where a statement is opposite to one that appears elsewhere

D. Duplication, where a statement is a copy of one made elsewhere

E. False, where an assertion is simply not the case

F. Grammatical, where the basic language rules are violated

G. Illogical, where a statement or conclusion doesn't make sense

H. Imprecise, where a word or phrase is vague or broad

I. Improper capitalisation, where words are capitalised for no reason and are not to be construed as defined terms

J. Incomplete, where a statement or notion is not fully expressed

K. Inconsistent, where different parts of a statement or document do not agree

L. Omission, where a word or statement has been left out

M. Punctuation, where the meaning of a statement is adversely affected by the placement or lack of punctuation, or the use of incorrect punctuation

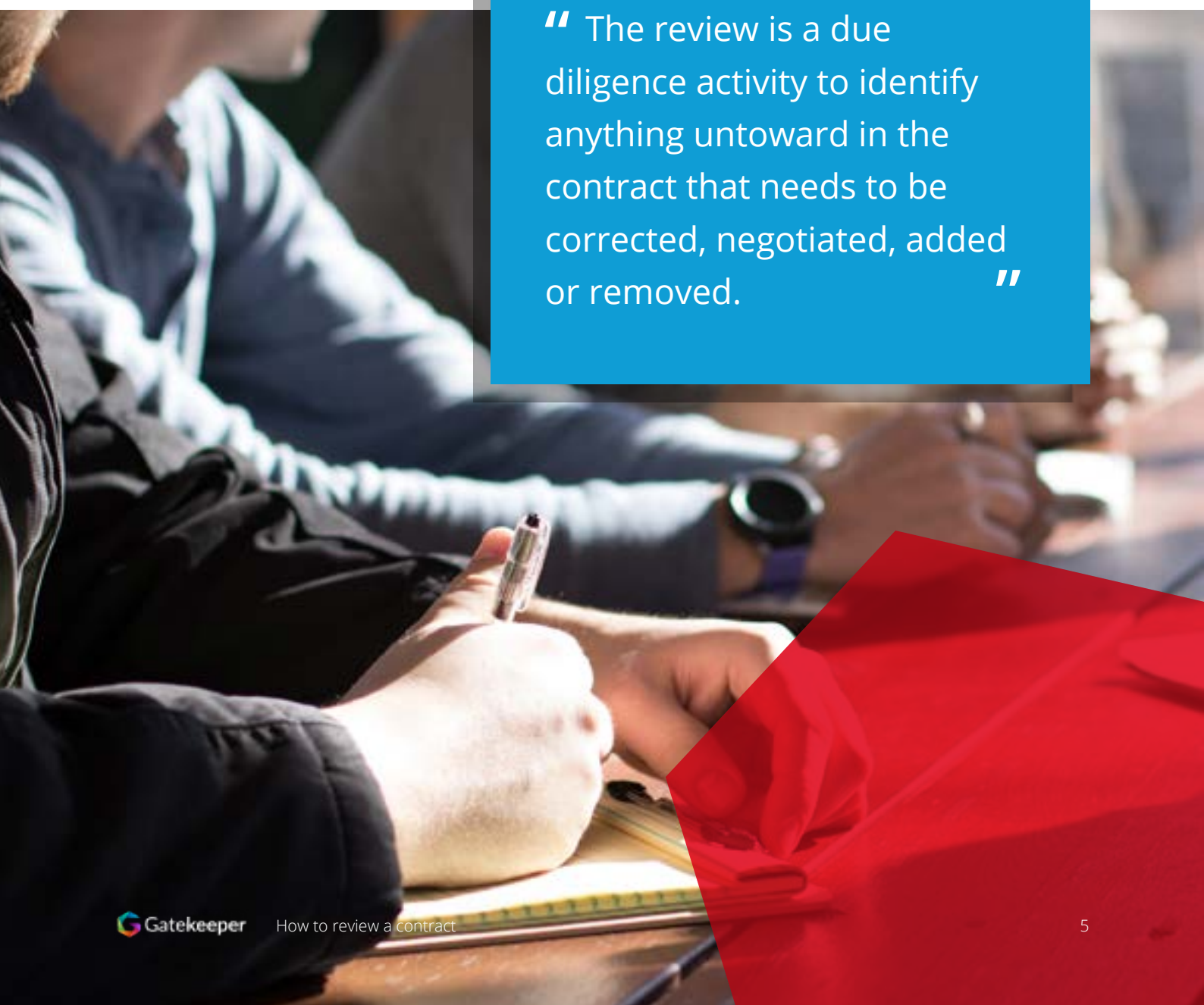
N. Readability, where statements are too long, convoluted, complex or poorly expressed to be easily understood.

O. Spelling, where a word has been misspelled or a homonym (a similar sounding word with different spelling) has been used

P. Typo, where characters in a word have been added, deleted or transposed to create an incorrect word for the context of the statement it appears in

Q. Undefined term, where words are capitalised to indicate a defined term but no definition can be located

R. Wrong clause number, where a clause is not numbered in sequence, or a statement refers to a non-existent or irrelevant clause



“ The review is a due diligence activity to identify anything untoward in the contract that needs to be corrected, negotiated, added or removed. ”

2. Check for reasonableness.

A contract may contain or lack terms, obligations, rights or other features that make aspects of the contract unreasonable for the specific circumstances to be covered.

All objections should be identified, corrections proposed and questions or comments raised for consideration.

There can be many forms of objection discovered, and some of the most common include:

A. Burdensome, where something is likely to cause practical difficulties

B. Excessive, where something is disproportionately large

C. Impractical, where something is not sensible

D. Insufficient, where something is inadequate

E. Missing, where something that ought to be covered isn't treated

F. Too broad / narrow, where something is not explicit enough / too limited

G. Unachievable, where something is highly likely to not be accomplished

H. Unfair, where something is overly biased in favour of somebody or some other thing

I. Unrealistic, where something is non-viable



3. Check for adequacy.

The most complex part of the review is determining the contract's fitness for purpose. That is, if it will produce the desired outcomes. There is no magic formula for how to do this because of the spectrum of possibilities of the nature of the deal.

It takes experience, a capacity for what-if scenario thinking, an ability to anticipate potential problems, and good judgement. All questions raised during this stage should be recorded, along with any immediate answers or comments.

A brief sample of the general types of question that could be asked include:

A. Is the requirements specification sufficiently comprehensive, detailed and accurate to provide confidence in the proposed solution and/or pricing?

B. Does the contract closely align with the requirements specification?

C. Does the contract accurately reflect the agreed deal?

D. Is the contract based on plausible assumptions?

E. Is there sufficient clarity about exactly how the contract works and is priced?

F. Have all the necessary roles and responsibilities been agreed and allocated?

G. Does the total level of changes agreed to the business's preferred position on various clauses represent an unacceptable risk?

H. Have all identified risks been allocated to those best able to manage and bear them?

I. Is a manageable level of risk associated with any outstanding matters that need to be resolved and agreed early in the life of the contract?

J. Are the transition in/out approaches realistic, with funding responsibilities allocated and sufficient time allowed for detailed planning?

K. Does the business have enough trained resources to implement and manage the contract in accordance with any agreed timetable?

L. Are there adequate mechanisms for considering inflation rates when dealing with price changes?

M. Does the contract's performance regime have the right metrics and the right number of metrics to influence service delivery performance and deliver the desired business outcomes?

N. Has the law of unintended consequences been considered in the design of the performance regime to discourage perverse behaviour by the supplier?

O. Does the performance regime make it possible and practical to terminate or prevent rewarding a chronically underperforming supplier?

P. Does the contract specify an assurance mechanism for testing supplier-provided performance figures and dealing with inappropriate supplier behaviour in this regard?

Q. Does the business have enough trained resources to implement and manage the contract in accordance with any agreed timetable?

R. Does the contract provide sufficient flexibility to deal with change resulting from a wide range of situations, even early in the term?

S. Does the contract impose any minimum spend and/or volume requirements that cannot be altered despite changing business circumstances?



4. Extract useful information

A wealth of information is contained in a contract and its associated documents. This information becomes useful to a wider group of stakeholders than just the Contracts Manager when it is extracted from the contract documents, converted to plain language, made easily available to the relevant people and kept up-to-date over time.

Since the entire contract and its associated documents must be closely read during the review, it is well worth the effort to translate and record the useful information in a summary document as it is encountered, even if has been identified as a concern during the review.

The nature of information that may be extracted from contract documents can include:

A. Assumptions, things pertinent to the contract that are expected to be true or certain to happen

B. Confidential information, the general nature of information that will be disclosed by one party to another party and must not be further disclosed except under agreed circumstances

C. Contract management plan, the sequence and timing of activities expected to be performed in ensuring the performance of a contract

D. Departures, all changes made to the reviewing party's preferred position on certain clauses

E. Events calendar, contract-related activities and the dates when they need to be started or finished

F. Intellectual property rights, the nature of any IPR that will be used or granted during the contract

G. Key personnel, those whose skills and experience are critical to the success of the contract

H. Obligations and rights, things that one or more parties to the contract must or must not do, or may do

I. Outstanding matters, things that need to be resolved following contract execution

J. Personal data, any information about individuals that will be handled during the contract

K. Risks and mitigations, things that represent some kind of threat, and actions that can be taken to minimise the likelihood of occurrence or impact of the risk

M. Service levels, the measures of service performance expected to be delivered under the contract

L. Roles and responsibilities, the parts to be played under a contract and the duties assigned to each part

N. Transition in/out plans, the sequence of activities expected to be performed in establishing a new contract / disengaging from a terminating contract

To help with recording this information, we've put together a range of free Excel Templates, which can be downloaded via the following link:

<https://www.gatekeeperhq.com/free-contract-management-templates>

5. Deal with review outcomes

The issues or concerns identified while checking the contract's accuracy, reasonableness and adequacy:

- May need to be initially discussed internally with lawyers and/or key contract stakeholders to establish positions to be put to the supplier
- Need to be formally submitted to the supplier for consideration, response and any follow-up negotiations (both internally and with the supplier) until mutual agreement is reached.

The person responsible for reviewing the contract should agree with the supplier about how any negotiated decisions will be documented and who will update the contract documents.

Where the contract documents are updated by the supplier, the Contracts Manager or representative should confirm that the negotiated decisions are accurately reflected in those updates.

Where any of the useful information extracted from the contract documents into a summary document has been changed during the negotiations about issues and concerns, further updates to the the relevant portions of the summary document need to be made.

Summary

It's clear that there are many ways that a contract can have problems, from immaterial to insurmountable, and that effective contract reviews are critical for detecting and dealing with those problems.

In practice, it's highly unlikely that very many of the possibilities listed under the checks for accuracy and reasonableness will occur in any single contract, but the possibility and the risk potential both rise in proportion to contract length and complexity.

// The real difficulty lies in checking for adequacy, and this is compounded not only by contract length and complexity but also by the highly variable nature of both products and services covered and the deal struck by each contract. The risk potential rises accordingly. **//**

This difficulty can be overcome in time with mentoring, exposure and experience, which all lead to insight which leads to foresight which allows derivation of the right questions to ask when checking for adequacy.

Next step

For more information on managing contracts effectively, you can download our FREE 38 page guide – [The Complete Guide to Contract Management.](#)



This guide has been put together by



Gatekeeper works with companies of all sizes, from start-ups needing to manage 30-50 contracts, right through to enterprise level organisations in industries like Finance and Healthcare.

If you believe your business can benefit from a Contract Management Solution then find out more at

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