



MANAGE RISK



EXCEL IN SERVICE

# Kingswell

*An innovative and informative 2-day workshop for developing contractual techniques and surviving the credit crunch!*

# Effective Outsourcing Contracts

## Objective:

To present the key factors for efficient and effective passing of service provision or production to an external supplier

## Who Should Attend?

Contract Managers  
Purchasing and Supply Managers  
Operations Supervisors  
Project Managers  
Production Coordinators  
Business Consultants  
Technical Support Managers  
Legal Advisors  
IT, Support and Operational Managers considering Outsourcing

## Why Should You Attend

Outsourcing companies are facing increasing competition and falling contract values, giving potential customers greater bargaining power for outsourcing contracts. However, despite the debate that has prevailed around outsourcing for the past few years, the practice has shown no sign of abating.

Problems occur with outsourcing for various reasons, among which is client dissatisfaction or loss of control and know-how. So it stands to reason that sound contracts are essential to preventing such problems and to resolving them should they occur.

A proper contract will ensure that standards are set for the supplier, that divisions of responsibility are clearly defined and that if anything goes wrong there is accountability.

However, many problems have occurred in relation to the outsourcing process. The solution lies in excellent

preparatory work to set the scene for handing over processes and a balanced but robust contract. There is no outsourcing contract blueprint as each is particular to the organisation, but here are some starting points.

The training course will provide valuable expertise in the area of contract outsourcing including an insight into efficient drafting techniques.

Has your business considered the options?

Do you have measures in place to deal with 'get out clauses' and to negotiate the best strategy in advance?

**This course can inspire new ideas and improve business efficiency in terms of the drafting techniques and negotiation of the relevant clauses.**

### **WARNING**

Financial uncertainty arising from the credit crunch is likely to lead to many outsourcing deals being re-negotiated, reduced in scope or terminated in 2009.

So what can be done to ensure that your business is the best equipped to deal with any negotiations and ready to seize the initiative in the market?

## **What Can be Achieved?**

**See also: Working Through and Beyond the Recession!**

**This training will enable you to:**

- Enhance your profits from outsourcing
- Protect your business as cash becomes tighter
- Increase your commercial options
- Maximise potential from all contractual situations
- Help your business lead the way in sustainable development

### **Effective Contract Outsourcing: Programme**

#### **Day One: First Topic - Introduction and Planning**

- Initial presentation on the effectiveness of contract outsourcing and what techniques may be employed to ensure that the contract achieves the anticipated benefits. Focused on 4 key aspects for discussion:
  - Allowing for controlled flexibility
  - Letting the deal drive the drafting
  - Co-operation being the key to the long term and evolutionary nature of outsourcing arrangements
  - Seeking a win/win situation
- Discussion would then focus on the preparation for management of an outsourcing transaction, through discussing strategies, the planning stage, the bidding and selection process and putting together a business case to assist in deciding on the outsourcing procurement process.
- Discussion about the practical application of benchmarking in today's market. Technique can be applied at any time during the life of a contract and in the current climate awareness will be raised of benchmarking in

relation to the commodity elements of IT, etc.

### **Day One: Second Topic – Outsourcing Contract Drafting**

- Contract outsourcing case study: designed to facilitate the learning of effective drafting techniques, by drafting clauses and documents which are both comprehensive and definite. This will achieve the minimisation of slack contracts and include the use of precedents and advice to raise awareness of good practice.
- Feedback will be provided on these exercises, with a discussion of the various components of an outsourcing contract, from the definitions stage to the facilitation of the actual agreement in practice.
- Outsourcing in different industries will be discussed: Information Systems outsourcing, Telecommunication outsourcing, public sector and business process outsourcing.
  - At this stage we will consider taxation consequences of outsourcing especially the foreign dimension (i.e. outside national law). This practical consequence of outsourcing will be raised in relation to profits/losses made by a company on the back of the outsourced contract.

### **Day Two: Third Topic - Benefits and Breakdown**

- Discussion is focused on a case study involving the breakdown of a contractual agreement and what provisions and clauses (e.g.: step in rights) should be in place to resolve disputes promptly and provide effective and commercially realistic remedies for both parties in the event of contractual default by the other. Discussion will also include issues surrounding limitation of liability, termination and re-negotiation conditions.
- An exercise covering the advantages and disadvantages of outsourcing will reinforce learning points from the drafting stage of the process. This will involve working through the merits of this process including:
  - Examples of Advantages: Cost saving advantages, increased performance and service level improvement, risk share and allocation and the benefits from economies of scale.
  - Examples of Disadvantages: loss of control of business management and loss of expertise in certain areas, lack of cultural fit, bad public/customer perception, higher than expected procurement and contract management costs.
- Case Study: Negotiation scenario covering the breakdown on an outsourcing contract. Utilising process of mediation and conflict management, how troubleshooting can lead to a satisfactory outcome for both parties. Post termination clauses and provisions may also be considered and incorporated into the negotiation process.
- Plenary session covering mediation agreements and the various legal aspects of outsourcing post termination, e.g. the regulatory restrictions on certain industries.
  - A further case study example on the back of practitioners' research will examine 'Legal risks and challenges to global outsourcing'. This will aim to raise awareness through real life examples of the taxation, financial reporting, privacy, data protection and records management. Emphasis will be placed on confronting these challenges through effective contract drafting as discussed in Topic 2.

### **Day Two: Fourth Topic - Product Liability and Definition of IP Ownership Rights:**

- Focused presentation on product liability and the responsibility which is placed on businesses in situations concerning the supply of products where losses are caused by the condition of the products.
  - This practical and pragmatic presentation will focus on limiting liability where possible and ensuring that efficient and responsive measures are in place both in the contract and in practice to safeguard against the risks involved.
  - Clearly in the IT/Telecommunication business, the issue is very live and could lead to substantial losses should the protection not be in place. Protection may be afforded from release and assumption of risk agreements which should be commonplace in any contract.
  - Presentation will address the multi-sourcing risks in terms of liability for larger businesses, emphasising the need to define the boundaries of responsibility and avoid slack contracts causing a blame-shifting culture.

- **Discussion concerning: Risk evaluation and regulatory compliance**

Business exposure to product recalls or civil damages claims can be minimised by effective preparation. Attendees will be provided with information about the diverse aspects of pre-crisis processes and strategies. These include:

- advice on product labelling and advertising
- drafting contractual limitations of liability for recall costs or liability damages
- designing procedures for claims handling and recalls
- holding dialogues with regulators to ensure regulatory compliance

**Definition of IP Ownership Rights:**

- Concluding presentation covering IP rights and how they constitute a strategic resource that may be represented by patents, trade secrets, copyrights, and trademarks and that can assist businesses in the development of core competencies and sustainable competitive advantage.
- The presentation will address terms of IP rights and ownership. We will show how the outsourcing contract can provide an infrastructure for adequate corporate security that protects IP exchanges among customer and vendor companies, how IPs will be utilised by the customer and the companies, and the degree to which IP can be accessed at all levels of the customer and seller companies. In the event that the customer company enters into contract with the seller company to jointly develop IP, the outsourcing contract must address all ownership and control issues during the partnering activities. Regardless of whether IP is single or jointly owned as dictated by the outsourcing contract, the restrictive covenants must be compatible with international law.

**Objectives:**

On completion of the course, participants will have gained a firm understanding of the background requirements to outsourcing contracts and the key elements for consideration at the planning stage of the deal. Contract drafting techniques (through case study and practical application) will improve contract drafting and eradicate poorly defined and weakly drafted contracts.

The second half of the course demonstrates and resolves the need for effective dispute management and, through role-play scenarios, the development of negotiation techniques on the breakdown of a contractual situation should have improved. Finally, the course will cover product liability and IP rights especially when dealing with a definition of ownership rights. This aspect will be explored through a mixture of presentation on discussion topics to investigate aspects of liability throughout various business models.

The workshop will also provide a plenary session with more focused questions of practical application being addressed and discussed.

**Your Expert Course Leader**



Alex Shorey is a dynamic young lawyer who brings an enthusiastic approach to the practical application of legal principles and practices.

Alex holds a LLB (Hons) degree from Keele University, UK; LLM in Legal Practice and a Postgraduate Diploma in Legal Practice.

He has worked with Bradley Saul Solicitors; Reeds Solicitors; and HMG Law. As a Senior Consultant with Kingswell International, he now brings his expertise to a wider international clientele.