



NACCM
Nordic Association of Contract and Commercial Management



THE GOAL FOR NACCM:

To be a facilitator for the education and discussion of legal and commercial issues arising from the daily work in all phases of projects. We look at issues from all stages of a project; sales, engineering, procurement, execution close out and disputes.

THE GOAL FOR THE HALDEN WORKSHOP:

To create a yearly meeting place and network for the people working with the commercial and legal issues.

WHO WILL PARTICIPATE?

The Halden Workshop is for contract and commercial managers, in-house lawyers and others working with legal and commercial issues arising in connection with projects.

THE CONFERENCE SETUP

The idea is that a speaker spends 20-40 min on a topic, after which we have panel/group- discussions or smaller workshops sharing expertise, ideas and feedback on the topic.

THE 2024 PROGRAM SUMMARY:

- Update on relevant court decisions
- How to use probability calculations in claims handling and disputes
- International vs nordic approach to contract management
- The pros and cons of mediation
- Contract life cycle management software
- Unveiling the truth: discover and defend yourself against manipulation
- Project delivery and collaboration in large investment projects
- The pros and cons of building a CM department

MEMBERSHIP FEES & ENROLLMENT

All conference attendees are automatically enrolled as a member for 2025.

NACCM COMMITTEE VOTE

We will be choosing a program committee for the Halden Workshop for 2025.





NACCM

Welcome to NACCMs Halden Workshop:

DATE: 10 to 11 OCTOBER 2024

NACCM is hosting it's first annual workshop on contract and commercial management on 10 and 11 of October 2024 in Halden, Norway.

Halden is some 80 minutes' drive from Oslo and is an idyllic small town, just on the border to Sweden. Above the town looms the historical Fredriksten Fortress.

The fortress is one of the most important attractions for tourists who visit Halden, and it is here we proud to host our NACCM Conference dinner. The conference itself will be held in the centre of Halden.

Negota lawfirm and Berg Sparebank is sponsoring this event. We welcome you to this a unique workshop.

www.negota.no



PROGRAMME FOR THURSDAY

THURSDAY - 10 OCTOBER

0900-1100 Update on relevant court decisions

Dr. Herman Bruserud - Associate Professor University of Oslo

1100 -1200 How to use probability calculations in claims handling and disputes Tobias Leknes & Bjørn Olai Bye

1200-1300 Lunch

1300- 1345 Continue: How to use probability calculations in claims handling and disputes

1400- 1500 The pros and cons of mediation
Ragnar Lindefjeld - Judge at Oslo District Court

1500 - 1600 Project delivery and collaboration in large investment projects

Anders Killander - Digital Project Delivery Expert

1600- approx. 1700 Workshop/Q&A



SOCIAL PROGRAMME / THURSDAY EVENING

1900-2100 Dinner by Curtisen

Restaurant Curtisen lies at the heart of the Fredriksten fortress in Halden. At Restaurant Curtisen they use regional ingredients from the rich pantries of Østfold, and embrace the history surrounding both the food and the drinks to complement it.

More info: www.curtisen.no

Ca. 2130 – 2400 Kulturhuset

After dinner a bus will take us down to Kulturhuset. For those who would like to walk it is a 15 min walk. At Kulturhuset the band "What the Funk" will make sure to entertain us with some interesting music.





FRIDAY - 11 OCTOBER

0900 - 1000 The pros and cons of buliding a CM department
Lars Christian Eriksen - CEO/General Counsel Nexans NO

1000 - 1100 International v Nordic approach to CM
Rafael Rodríguez López - Contract manager Nexans

1100-1200 Contract lifecycle management
Rasmus Tønnies - Partner ARC Denmark

1200-1300 Lunch

1300-1400 Unveiling the truth: discover and defend yourself
against manipulation
Kent Dalh-Brunheim - Clinical Psychologist at Østfold Hospital and
Halden Prison.

WE HAVE THE PLEASURE OF WELCOMING THE FOLLOWING
SPEAKERS TO THE NACCM CONFERENCE:



Herman Bruserud

Associate Professor PhD, Department of Law at University of Oslo

Associate Professor PhD Herman Bruserud has been a member of the academic staff at the Department of Private Law at the University of Oslo since 2012. His main area of law is contract law, with a special focus on sales contracts and onshore and offshore construction contracts. He regularly acts as an arbitrator, mediator and expert in disputes of a contractual nature. *Foto: Thomas Haugersveen/Juristkontakt*



Ragnar Lindefjeld

Judge at the Oslo district court

Ragnar Lindefjeld was appointed judge at the Oslo district court in 2015. He is assigned to the court's group of construction law judges, where he regularly adjudicates and mediates construction law disputes. From 2021 to 2023 Ragnar served as a judge at the Borgarting court of appeals. Prior to starting his judicial career he has practiced commercial and corporate law in a top-tier Oslo law firm and held a position as in-house counsel at Norway's largest bank. His main focus has been on IT-and technology-related legal issues. In addition, Ragnar has always been interested in dispute resolution and negotiation. He holds a Master's degree in conflict management and mediation from the University of Copenhagen and regularly teaches mediation to judges and lawyers in He also regularly acts as arbitrator and mediator in contractual disputes.



Rasmus Tønnies

Partner ARC Denmark

Rasmus Tønnies is a Partner in ARC Contract Management, a Nordic based specialist consulting firm focusing on advisory within Contract Management and Contract Lifecycle Management software. He is a Fellow and Council Member of World Commerce and Contracting, the leading global non-profit organization focusing on raising the awareness and recognition of the Contract & Commercial Management discipline in modern business. Rasmus is a former certified lawyer specialized in contracting and is now assisting large private and public organizations in implementing Contract Management as a business discipline and advising organizations in selecting and implementing CLM software. He is also appointed a voting member of the Standard Consensus Board in the joint effort between WorldCC and National Contract Management Association (US) to obtain a global ISO certification for a Contract Management standard.

WE HAVE THE PLEASURE OF WELCOMING THE FOLLOWING
SPEAKERS TO THE NACCM CONFERENCE:



Lars Christian Eriksen
CEO/General Counsel Nexans NO

Eriksen is General Counsel for Nexans's Generation and Transmission Business Group. He is a Norwegian qualified attorney, and have worked in-house specialized in contract law, contract management and construction for close to 20 years. His generalist in house background has brought a broad experience in all relevant legal and compliance activities such as risk management, governance, negotiations, drafting and support to business management. He has significant experience in in day-to-day advise to projects on contract management and legal support in claims/dispute resolution processes in all relevant Oil&Gas and Energy jurisdictions. He has held senior legal management positions in Technip, TechnipFMC and Nexans. Lars Christian is also the Chief Executive Officer of the Nexans' entities in Norway.



Rafael Rodríguez
Contract manager Nexans

Rafael Rodriguez is a chartered MSc. Civil Engineer and a fellow of the Chartered Institute of Arbitrators (FCIArb). Rafael has 18 years of experience in large EPC project commercial and contract management and his career spans across Norway, Germany, Spain, Turkey, and Gibraltar, where he has worked for large international EPC/D&B contractors in railway, highway, airport, and renewal energy projects.

Rafael is well-versed in multiple ADR mechanisms and has promoted settlements for large construction disputes. Likewise, he has actively supported legal teams in international arbitrations and court proceedings. Currently, Rafael is Nexans Norway's contracts manager for TenneT's 2GW offshore wind projects.



Tobias Leknes

Leknes is President of the Norwegian Poker Federation and one of the world's leading mixed games players, with multiple world championship titles.

WE HAVE THE PLEASURE OF WELCOMING THE FOLLOWING
SPEAKERS TO THE NACCM CONFERENCE:



Anders Killander
Digital Project Delivery Expert

Killander has a MSc. degree in Engineering from KTH (Royal Institute of Technology), Stockholm. He has worked with Engineering and Construction collaboration for large projects & programs for 20+ years. This has included both asset owners requirements as well as needs of participating contractors/EPCs. The last 10 years Anders has focused on digitizing the project delivery processes, leading to better transparency of contractual deliverables. Interface responsibilities and minimizing disputes due to neutral data capture and logging. Having all data and communication logged also greatly reduce time spent in discovery processes.



Kent R. Dahl-Bruheim
Clinical Psychologist at Sykehuset Østfold and Halden Prison

Kent R. Bruheim is a clinical psychologist at Sykehuset Østfold and Halden Prison. He also provides private psychological counseling in Halden. Kent holds a Bachelor of Science (Hons, 1st Class) in Psychology and a Master of Psychology. He is a specialist in clinical psychology and is additionally certified as a Somatic Experiencing Practitioner (SEP) and an EMDR practitioner. Kent has a longstanding interest in the psychological and spiritual self-realization of individuals, using the Enneagram as a tool to foster understanding and compassion.



Pål Are Sund
Chairman of NACCM
Founding partner of Negota



Marie Lislerud Midtfjeld
Board member of NACCM
CEO Negota

CONFERENCE REGISTRATION FEES & PROCESS

Registration is online via the form on our website - www.naccm.no

Cost for Halden Workshop	NOK 7000
Hospitality	Included
Hotel per night, including breakfast	NOK 1450

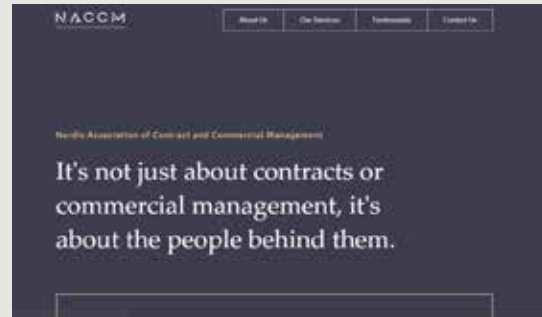
Payment is due 14 days after [registration](#).

NACCM

EXTRA USEFUL INFORMATION

WEBSITE: WWW.NACCM.NO

A website dedicated to providing an overview of the organisations goals, contact info and meetings can be found at www.naccm.no

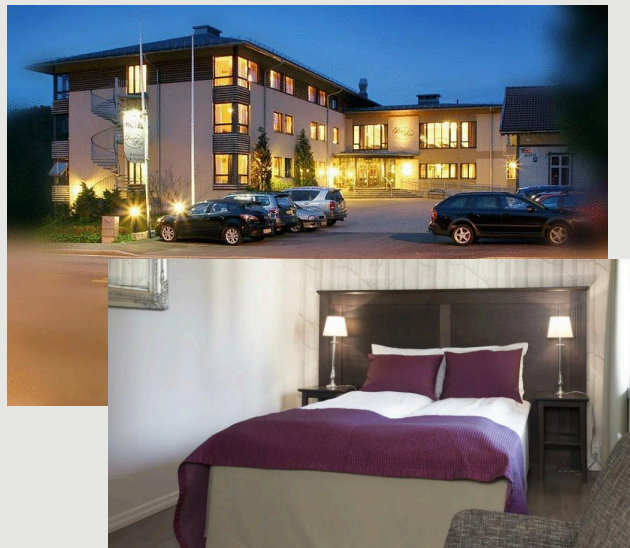


ACCOMMODATION

HOTEL: Clarion Collection Park Hotel
Halden.

Clarion Collection® Hotel Park in Halden is a charming hotel within easy walking distance of the city centre. Breakfast is included your room rate. Guests can enjoy free parking.

It is a 9 min. walk from the hotel to Kulturhuset i Halden.



ARRIVAL, TAXIS & PARKING:

The conference will take place at KULTURHUSET i HALDEN. Kulturhuset is located in the city centre: Tordenskjolds gate 1, 1776 Halden.

DRIVING: GOOGLE MAPS can offer the best arrival alternatives by car. Search: Clarion Collection Park Hotel. For the conference: Search: Tordenskjolds gate 1, 1776 Halden.

TRAIN & TAXI: Taxis are available at the train station or the main square. The main square is a 4 min. walk from the train station. KULTURHUSET i HALDEN is a 7 min. walk from the train station. The hotel is 20 min. walk from the train station.

DIETRY REQUIREMENTS AND INFORMATION: Information goes here



WE LOOK FORWARD TO HOSTING YOU

NACCM

Nordic Association of Contract and Commercial Management



UiO : Faculty of Law
University of Oslo

NACCMs Halden Workshop, 10-11 October 2024

Update on relevant court decisions

Førsteamanuensis PhD Herman Bruserud



Innramming...

- Forsøke å finne et tema som er relevant og interessant fra et nordiska perspektiv
- En ren redegjørelse for det siste årets avgjørelser fra de øverste domstolene oppfyller dessverre verken relevans- eller interessant-kravet
- Derfor...
- Tolkning av kommersielle kontrakter med et norsk utgangspunkt, men i et nordisk perspektiv (ved hjelp av dere...)

Tolkning av kommersielle kontrakter

- Deltakerne på workshopen – DERE – er alle eksperter på tolkning av kommersielle kontrakter innenfor deres egne jurisdiksjoner (antar jeg) :
 - En stående invitasjon til å avbryte med spørsmål og innspill
 - Uansett: Jeg kommer til å henvende meg, mer eller mindre direkte, til dere, med spørsmål mv.

«Oppvarming»: Fellesnordiske (historiske?) utgangspunkter for tolkning av kontrakter

- «Tolkningshierarkiet»:
 1. Den intersubjektive forståelsen / felles forståelse
 - Et faktisk spørsmål (men med en normativ komponent)
 2. God tro-regelen (en avtale vil bli tolket mot en part som burde / måtte forstå at den andre parten hadde en avvikende forståelse av avtalens innhold)
 - Et normativt spørsmål
 3. «Objektiv» tolkning
 - Et normativt spørsmål

Kan dere kjenne dere igjen i dette?

Et norsk sidesteg

«Oppvarming»: Fellesnordiske (historiske) utgangspunkter for tolkning av kontrakter

- «Tolkningshierarkiet»:

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3. «Objektiv» tolkning
 - Et normativt spørsmål

Kan dere kjenne dere igjen i dette?

I løpet av de siste 15-20 årene har det vært en utvikling i praksis fra Høyesterett mot en tydeligere prioritering av såkalt “objektiv” tolkning når man tolker kommersielle kontrakter

Ser dere den samme utviklingstendensen i de andre nordiska landene?

Et norsk sidesteg

- Men... hva er en “objektiv” tolkning?

Et norsk sidesteg

- Når har Høyesterett særlig understreket betydningen av en “objektiv” tolkning?
 - Når kontrakten er inngått som ledd i næringsvirksomhet mellom profesjonelle parter
 - Når man står overfor en standardkontrakt
 - Når kontrakten er inngått etter en avtaleinngåelsesregime som oppstiller (særlige) rammer for hvordan avtalen må tolkes

Et norsk sidesteg

- Ad. Når kontrakten er inngått som ledd i næringsvirksomhet mellom profesjonelle parter

Rt. 2002 s. 1155

«Det finnes støtte så vel i teori som i rettspraksis for at slike kontrakter (avtaleforhold mellom to profesjonelle parter) som utgangspunkt bør fortolkes objektivt, og at kontraktens ordlyd må tillegges stor vekt. Jeg viser her eksempelvis til [Rt. 1994 s. 581](#), som gjaldt en aksjonæravtale. Her la Høyesterett stor vekt på avtalens tekst:

...

At prinsippet om objektiv fortolkning har særlig styrke i avtaler mellom næringsdrivende, understrekes av **forretningslivets behov for sikkerhet og forutberegnelighet**, som åpenbart fremmes best av en tolkning basert på objektive, tilgjengelige elementer. ...»

Et norsk sidesteg

- Ad. Når man står overfor en standardkontrakt

HR-2020-228-A

«Vår sak gjelder uttrykket ‘innsigelser’. Ved tolkningen tar jeg utgangspunkt i tolkningsprinsippene som gjelder for standardkontrakter og spesielt for kontrakter som er utarbeidet av representanter fra berørte bransjeorganisasjoner, slik tilfellet er for NS 8415. For slike kontrakter må det foreligge sterke grunner for å fravike det tolkningsalternativ som følger av en naturlig forståelse av ordlyden ...»

HR-2023-534-A

«Ved tolkningen av denne typen standarder må det foreligge sterke grunner for å fravike det tolkningsalternativet som følger av en naturlig forståelse av ordlyden, se HR-2020-228-A avsnitt 50 med videre henvisninger. Ordlyden er likevel ikke avgjørende alene. Som fremhevet i Rt. 2010 s. 961 avsnitt 44 må ordlyden blant annet leses i lys av de formålene bestemmelsen skal ivareta, og andre reelle hensyn.»

Normalt nok så
ubegrunnet, men
antakelig:

- Effektivitetshensyn
- Legitimitetshensyn
- Forutbregnelighets-
hensyn (dersom
partene er
profesjonelle)

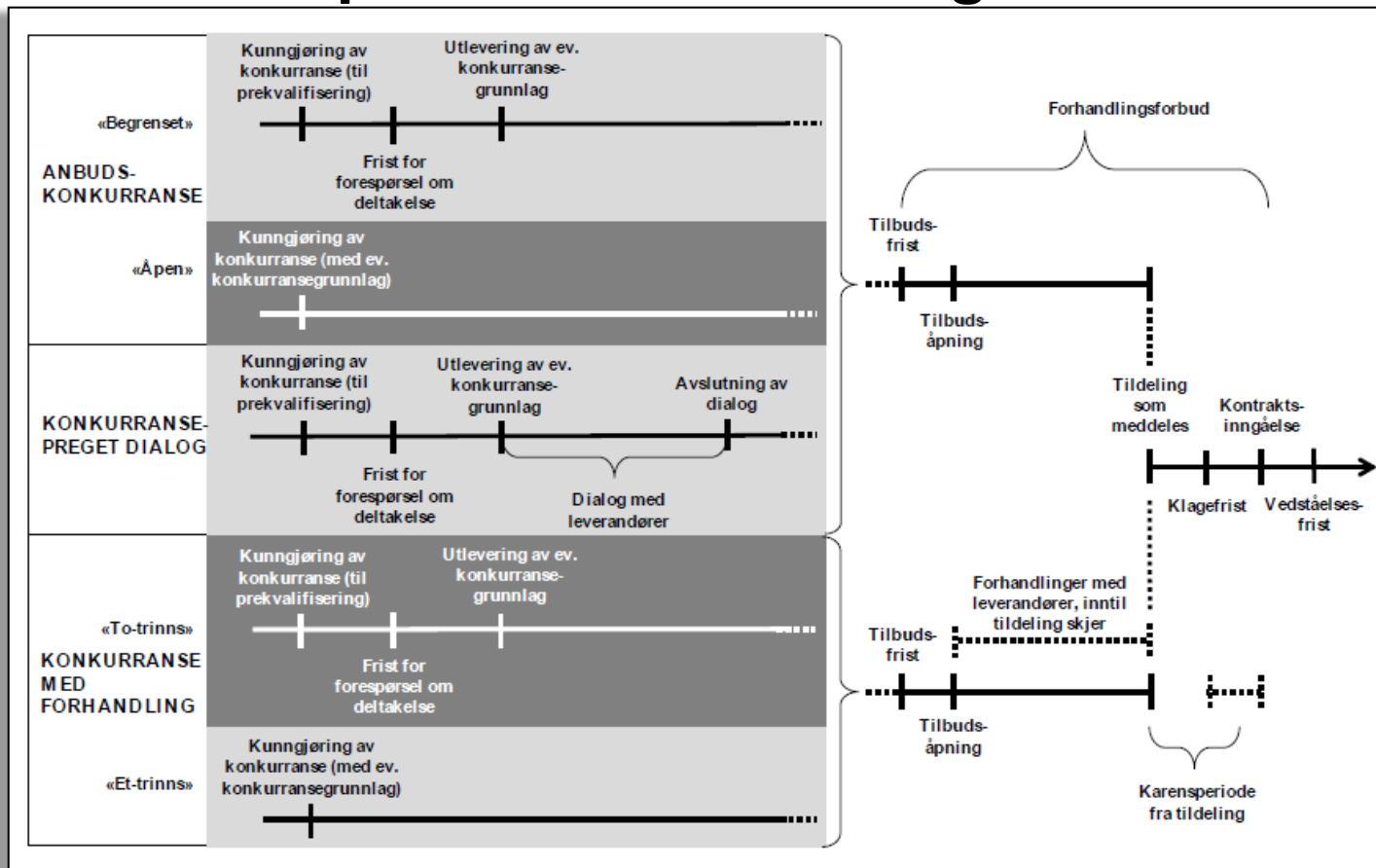
Et norsk sidesteg

- Ad. Når kontrakten er inngått etter en avtaleinngåelsesregime som oppstiller (særlige) rammer for hvordan avtalen må tolkes

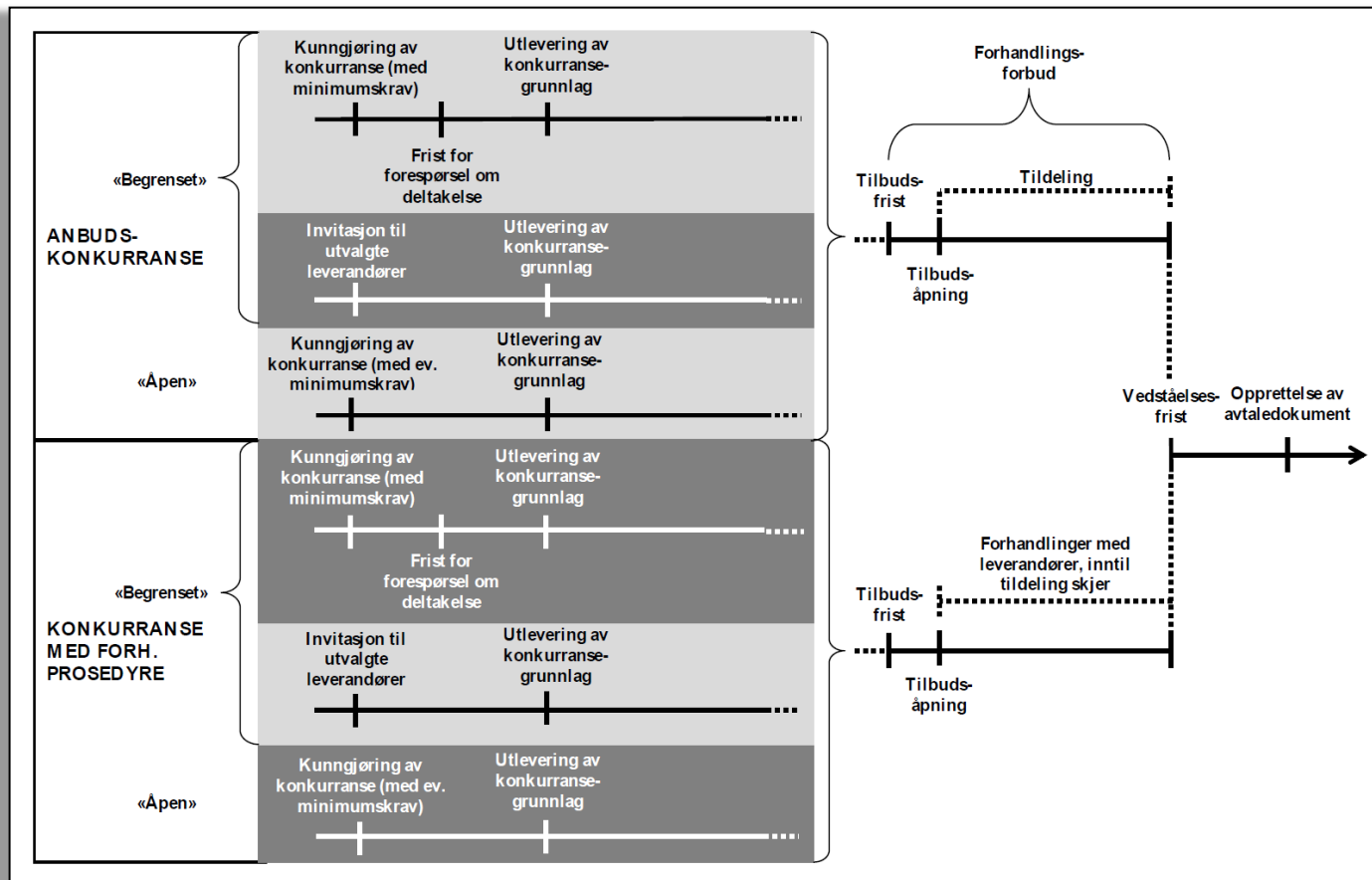
Rt. 2012 s. 1729

«... Ved anbud, der kontraktsgrunnlaget er utarbeidet av den ene parten alene, er det krav om like konkurransevilkår for tilbyderne. Prinsippet om en objektiv fortolkning av avtaler mellom næringsdrivende får derfor en særlig styrke i entrepriseforhold. ...»

Anskaffelsesprosessen – offentlig

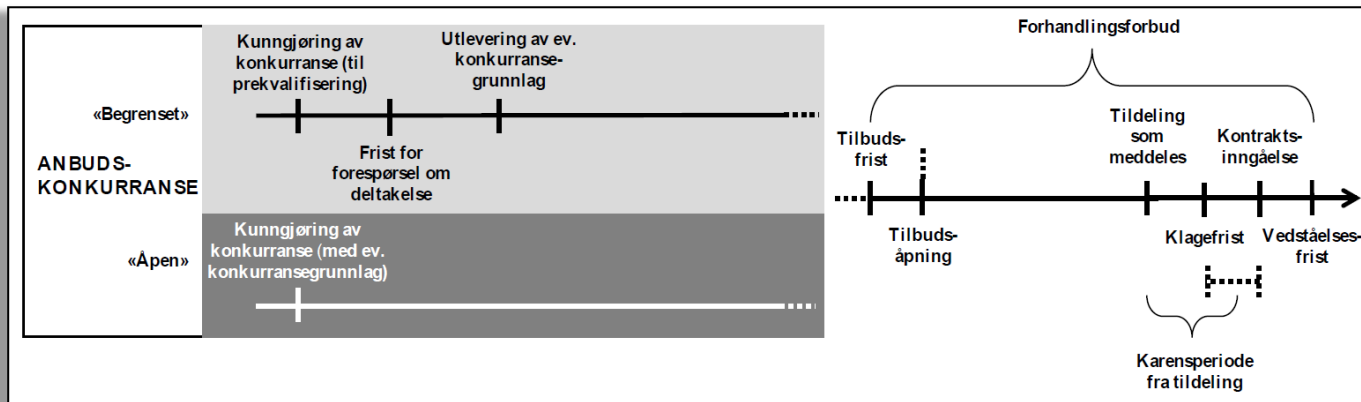


Anskaffelsesprosessen – privat

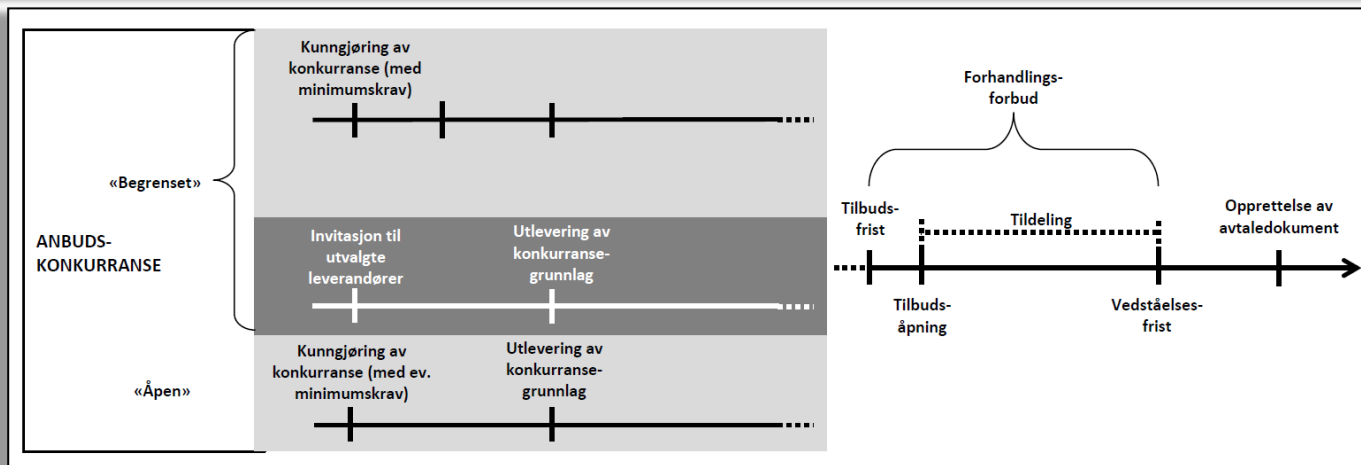


Anbudskonkurransene

Offentlig



Privat



Et norsk sidesteg

- Igjen... hva er en “objektiv” tolkning?

Et norsk sidesteg

«I mellomkrigstiden var bruken av uttrykkene 'subjektiv tolkning' og 'objektiv tolkning' langt på vei stabil, slik at grensen mellom subjektiv og objektiv tolkning markerte en grense mellom de slutninger som kan gjøres på basis av de tolkningsmidler som er tilgjengelige for begge parter ('objektivt tilgjengelige tolkningsmidler'), og de slutninger og forutsetninger som kun knytter seg til den ene parten. Denne bruksmåten av ordene, angir hvordan risiko skal deles ved dissens. Bruksmåten gir god mening om den relateres til tolkningsteoriene. Både viljesteorien og tillitsteorien er subjektive teorier ettersom de medfører at man i visse tilfeller vektlegger forhold som kun var tilgjengelige for den ene part (henholdsvis avgiver og mottager av det 'dispositive utsagn', 'rettshandelen' eller 'viljeserklæringen'). I motsetning til disse subjektive teorier har vi erklæringsteorien, som sikrer mottagers berettigede forventninger på basis av utsagnet og de objektivt tilgjengelige tolkningsmidler.

Den klassiske måten å bruke uttrykkene 'subjektiv tolkning' og 'objektiv tolkning' på, er bygget over et særlig faktum; nemlig at avtale kommer i stand ved at en person fremsetter et tilbud, som besvares med aksept fra mottager. Avtalens innhold består i dette tilfellet av en sammenkobling av tilbud og aksept. I en slik situasjon tilsier en subjektivt anlagt fortolkning at avgivers intensjon (eventuelt mottagers forståelse) er avgjørende for avtalens innhold, mens en objektivt anlagt fortolkning vil rette fokuset mot den skriftlige erklærings innhold etter alminnelig språkbruk.

Det er både i moderne rettslig praksis og teori tilløp til å bringe denne (høyst kontekstavhengige) privilegering av kontraktens ordlyd ut av sin opprinnelige kontekst, og også la den virke i tilfeller der elementer utenfor ordlyden ville vist at partene eventuelt var enige om noe annet. I så fall snakker vi om en særlig kvalifisert form for tekstbasert tolkning i forhold til den klassiske bruk vi for eksempel finner hos *Stang*. Dette prinsipp er snarere et angrep på grunnprinsippet om at kontrakten skal tolkes i samsvar med hva partene mente (selv om dette måtte ha kommet til uttrykk på en objektivt misvisende måte), enn en form for risikodeling ved dissens. Motstykket til denne form for 'objektiv tolkning basert på kontraktens ordlyd', er ikke nødvendigvis subjektiv tolkning, men 'objektiv tolkning' basert på tolkningsmidler utenfor teksten.»

Hvordan ser dette ut i Norden for øvrig?

Et norsk sidesteg

- Når har Høyesterett særlig understreket betydningen av en “objektiv” tolkning?
 - Når kontrakten er inngått som ledd i næringsvirksomhet mellom profesjonelle parter
 - Når man står overfor en standardkontrakt
 - Når kontrakten er inngått etter en avtaleinngåelsesregime som oppstiller (særlige) rammer for hvordan avtalen må tolkes

Et eksempel fra Sverige: NJA 2015 s. 741

«En utgångspunkt vid en tvist om hur ett avtal ska tolkas är att söka utröna vad parterna gemensamt åsyftat vid avtalsslutet ... Vidare kan avtalet och avtalssituationen vara av sådant slag att det knappast är relevant att försöka fastställa en gemensam partsavsikt. Det kan t.ex. gälla vid avtal med ett stort antal parter. Så är ofta fallet då parternas förhållanden regleras av ett standardavtal, låt vara att parternas diskussioner och liknande inför avtalets ingående kan utgöra omständigheter som ger uttryck för en gemensam partsavsikt som avviker från vad som annars skulle gälla enligt detta (jfr [NJA 2014 s. 960](#) p. 20). När individuella förhållanden inte kan fastställas eller ge ledning får tolkningen eller preciseringen av avtalsvillkor bygga på objektiva grunder.

Utgångspunkten är då avtalets ordalydelse. När ordalydelsen ger utrymme för olika tolkningar, liksom då ordalydelsen inte ger något besked alls, måste ledning sökas i andra faktorer. Andra relevanta tolkningsdata kan vara avtalets systematik och det aktuella avtalsvillkorets samband med övriga villkor, bakgrunden till regleringen, d.v.s. villkorets syfte, avtalsförhållandets natur och ibland parternas ställning (jfr [NJA 2010 s. 559](#) p. 9). Det är i allmänhet också naturligt att utgå från att ett villkor ska fylla en förnuftig funktion och utgöra en rimlig reglering av parternas intresse (jfr beträffande villkor i en rättsskyddsförsäkring [NJA 2001 s. 750](#)).»

WHY POKER? Probability in claims handling

10 October 2024



Why is probabilities and game theory relevant?

Probabilistic nature of claims

- Any contractual claim comes with uncertainty
 - Facts and evidence
 - Law and interpretation
 - Legal cost
- The probability of succeeding is never 100%
- This implies that a *bone fide* claim for MNOK 100 is not technically worth MNOK 100.



Claims handling as a game


Rational parties should always settle cash claims

However:

- The parties usually assess risk differently
 - Asymmetric information - access to facts
 - Biased, unclear or poor legal counseling
 - Awareness and control over legal cost
- The parties may also have different appetite for risk
 - Deep pockets
 - Not succeeding would break the business
- The parties may have ulterior motives
 - Force acceleration
 - Postpone payments (financing gains)
 - Retain payments and set-off positions for final accounts
- Understanding the game and probabilities may reduce the risk of costly litigation
- Who better to help us than Tobias Leknes (World Champion and President of the Norwegian Poker)

09.10.2024



A decorative graphic on the left side of the slide consists of two overlapping parallelograms. The front one is blue and the back one is a light green. They are positioned diagonally, with the blue one partially covering the green one.

Poker, probability and game theory

Tobias Leknes



About myself

Professional poker player since 2016

3 times Norwegian Champion in poker

13 times World Champion of Online Poker

President of Norsk Pokerforbund (The Norwegian Poker Association)

Expertise in “mixed games” -> Different kinds of poker variants

Very technical and mathematical approach to the game



Dealing with probabilities

Poker at its core is a mathematical game

Human intuition works poorly for probabilities and uncertainty

Understanding the game theory

Dealing with irrationality in poker and life

Texas Hold'em

2 dealt cards that are personal

5 dealt community cards consisting of

The flop - the 3 first dealt community cards

The turn - the fourth card

The river - the fifth and final community card

Combine your 2 dealt cards with the 5 community cards to make the best poker hand!

POKER HAND RANKINGS

ROYAL FLUSH

A, K, Q, J, 10, all of the same suit



STRAIGH FLUSH

5 cards of the same suit in sequence



FOUR OF A KIND

4 cards of equal value



FULL HOUSE

Three of a kind with a pair



FLUSH

Any 5 cards of the same suit



STRAIGHT

5 cards in a sequence



THREE OF A KIND

3 cards of the same value



TWO PAIRS

2 different pairs



ONE PAIR

2 cards of the same value



HIGH CARD

5 cards that do not interact with each other





Should I go all-in?

1. What do we gain if our opponent(s) folds their hand?
2. What do we win if our opponent(s) calls and we win the hand?
3. What do we lose if our opponent(s) calls and we lose the hand?

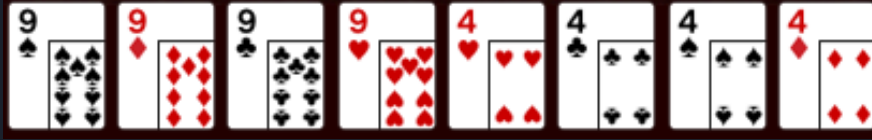
What are the probabilities of the different scenarios?

Is going all-in profitable?

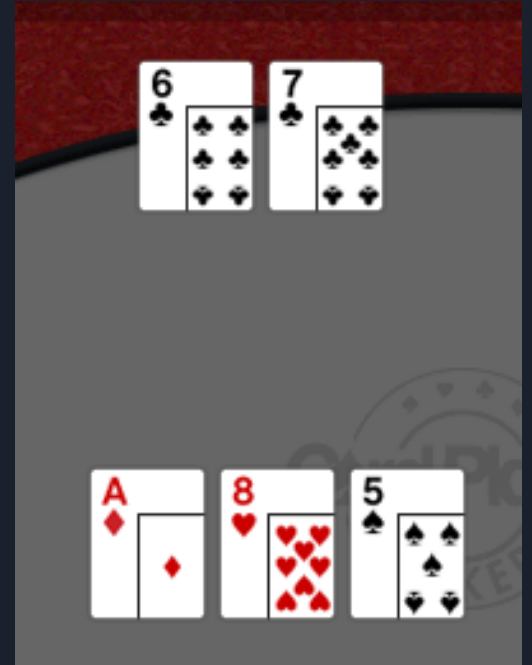
Estimate winning chances


On the flop: Number of outs times 4 \approx winning chances in %

On the turn: Number of out times 2 \approx winning chances in %



Winning chances should be close to 32%





Estimate chances that someone has an ace

1 opponent: 12.5%

2 opponents: 24%

3 opponents: 34%

4 opponents: 44%

5 opponents: 52%

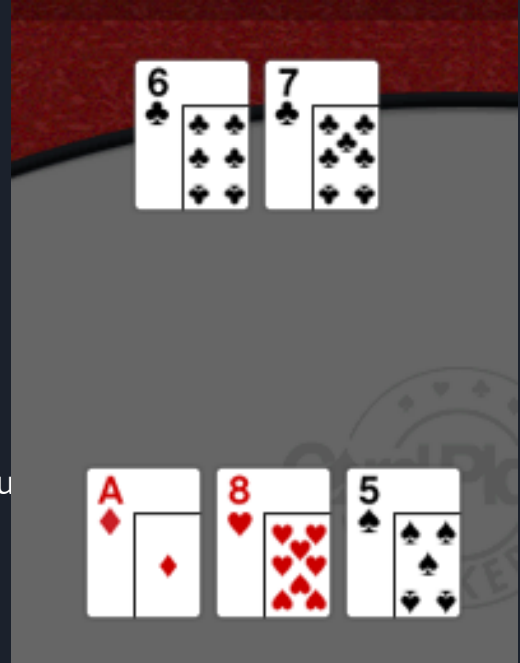
6 opponents: 60%

7 opponents: 66%

8 opponents: 72%

Be more careful the more opponents you have!

When assessing litigation risk remember the more outcomes you need to go your way, the less likely it becomes that you will succeed for all of them!





In this scenario the pot is 10,000 and we have 30,000 in our stack to go all-in

The gain in scenario 1 is 10,000

In scenario 2 we gain 40,000

In scenario 3 we lose 30,000

How often scenario 1, 2 and 3 happens depends on how many opponents we have and how big our winning chances are

Expected value (EV) of going all-in

1. +10,000
2. +40,000
3. -30,000

Versus 3 opponents

$$P(1) = 0.66$$

$$P(2) = 0.34 * 0.34 = 0.1156$$

$$P(3) = 0.34 * 0.66 = 0.2244$$

$$\begin{aligned} EV &= P(1) * 10,000 + P(2) * 40,000 + P(3) * (-30,000) \\ &= 0.57 * 10,000 + 0.1938 * 40,000 + 0.2244 * (-30,000) \\ &= 6,600 + 4,624 - 6,732 \\ &= 4,492 \end{aligned}$$



Expected value (EV) of going all-in

1. +10,000
2. +40,000
3. -30,000

Versus 7 opponents

$$P(1) = 0.34$$

$$P(2) = 0.66 * 0.34 = 0.2244$$

$$P(3) = 0.66 * 0.66 = 0.4356$$

$$\begin{aligned} \text{EV} &= P(1) * 10,000 + P(2) * 40,000 + P(3) * (-30,000) \\ &= 0.34 * 10,000 + 0.2244 * 40,000 + 0.4356 * (-30,000) \\ &= 3,400 + 8,976 - 13,068 \\ &= -692 \end{aligned}$$



EV of calling all-in

1. N/A
2. +40,000
3. -30,000

$$P(1) = 0$$

$$P(2) = 1 * 0.34 = 0.34$$

$$P(3) = 1 * 0.66 = 0.66$$

$$\begin{aligned} \text{EV} &= P(2) * 40,000 + P(3) * (-30,000) \\ &= 0.34 * 40,000 + 0.66 * (-30,000) \\ &= 13,600 - 19,800 \\ &= -6,200 \end{aligned}$$



Probabilities

Can be overwhelming in a chaotic world

Always better to aim than not to aim

Use statistics and history

Be realistic!





Risk vs probability

Risk \neq Probability

Assessing risk is what drives our decision making

		Cost	
		High	Low
Probability	High	High risk	Medium risk
	Low	Medium risk	Low risk



Game theory

Zero Sum Game

Zero sum game vs non zero sum game

Nash equilibrium

Deal making

	A	B
A	(5, -5)	(3, -3)
B	(2, -2)	(0, 0)

Prisoners dilemma

	Confess	Deny
Confess	(-5, -5)	(0, -10)
Deny	(-10, 0)	(-1, 1)

Deal making and settlement

Is it a zero sum game?

Factors that makes it a non zero sum game

Risk aversion

External costs/gains



How does a deal work in poker?

Difference between first and second:
425,000 NOK

What should a player ask for?

Winning chances:

- How strong is your opponent?
- How strong are you?
- How big is the skill factor in this particular situation?

How important is it to lower risk?

Financial situation

Plassering	◆ Premie ◆
1	1300000
2	875000




More game theory

Unpredictable vs predictable

Being “the aggressor” - claimant vs defender

Bluffing?

Understand your opponent, their risk assessment and knowledge about the situation



Dealing in claims handling

Settlement vs trial

Calculate probabilities → Winning chances in a trial

Calculate costs

Calculate the counterparty's costs

The nature of these “games” is that there will be room for settlement as long as both parties are rational in their decision making



Returning to claims handling

Assessing probabilities

- To find a zone of agreement both parties need a realistic (*but not necessarily identical*) assessment of the probabilities
- Claims assessment is not math, and lawyers rarely specify probabilities:
 - Unrealistic (10%?)
 - It could be argued (20%?)
 - Has some support (30%?)
 - There is some risk (40%?)
 - Not unlikely (50%?)
 - More probable than not (51%?)
 - Probable (60%?)
 - Very likely (80%)
 - Relatively certain (90%?)
- We could perhaps try to aim better

Pollution – ground conditions		
Additional mass replacement		
Impact	Claimed cost	Claim
1	Additional machinery	kr 4 200 000,00
2	Additional man-hours	kr 6 800 000,00
3	N/A	
16 days delay		
Impact	Claimed Impact	Claim
1	Extension of time / LD	kr 8 000 000,00
2	Operational cost	kr 11 000 000,00
3	N/A	

New control system requirements		
Redesign		
Impact	Claimed cost	Claim
1	Direct cost – re-design	kr 1 500 000,00
2	N/A	
3	N/A	
Alternative CS hardware		
Impact	Claimed cost	Claim
1	Direct cost – additional procurement cost	kr 2 250 000,00
2	N/A	
3	N/A	

Aggregate claim
Accepted claim
Claimant settlement offer
Defendant settlement offer

Sum total
kr 33 750 000,00
kr 0,00
kr 20 000 000,00
kr 5 000 000,00



Liability issues

Identifying the main conditions

Claimed circumstance	Pollution – ground conditions	New control system requirements
Condition 1	Timely notification	Timely notification
Condition 2	Pollution unknown	Deviation from SoW
Condition 3	Not-foreseeable	Instructed by client
Condition 4	Substantial deviation	

- There will always be a number of conditions that need to be satisfied for a claim to be successful.
- The above is a simple illustration using some typical non-dependent cumulative conditions for the client being liable for the two circumstances claimed.

Liability issues

Assessing probabilities

Claimed circumstance	Pollution – ground conditions	Probability	New control system requirements	Probability
Condition 1	Timely notification	95,00%	Timely notification	80,00%
Condition 2	Pollution unknown	90,00%	Deviation from SoW	85,00%
Condition 3	Not-forseeable	80,00%	Instructed by client	100,00%
Condition 4	Substantial deviation	90,00%		

- For each condition there will be a number of potentially disputed sub-issues.
 - When did notification period begin to run?
 - When was sufficient notice given?
 - What information did the contractor have before signature?
- Explicitly assessing probabilities for every issue separately is rarely practically feasible.
- We can still try to make some fair approximations.

Liability issues

Calculating overall probability

Claimed circumstance	Pollution – ground conditions	Probability	New control system requirements	Probability
Condition 1	Timely notification	95,00%	Timely notification	80,00%
Condition 2	Pollution unknown	90,00%	Deviation from SoW	85,00%
Condition 3	Not-forseeable	80,00%	Instructed by client	100,00%
Condition 4	Substantial deviation	90,00%		
Aggregate probability		61,56%		68,00%

- The probability of succeeding on each cumulative condition must be multiplied to find the aggregate probabilities.
- Although we are quite confident on each condition, the number of conditions to be satisfied drastically affects the probability of succeeding
 - $0,95 \times 0,9 \times 0,8 \times 0,9 = 0,62$

Causation issues

Claimed circumstance	Pollution – ground condition			
Claimed impact	Additional mass replacement	Probability	16 days delay	Probability
Condition 1	Additional mass replacement to fulfil regulatory requirements	90,00%	Prevents work on critical path 16 days	70,00%
Condition 2			No client float	95,00%
Aggregate probability		90,00%		66,50%

Claimed circumstance	New control system requirements			
Claimed impact	Redesign	Probability	Alternative CS hardware	Probability
Condition 1	Redesign necessary	90,00%	Alternative CS hardware nec	80,00%
Condition 2				
Aggregate probability		90,00%		80,00%

- Succeeding on liability is not enough
- We also need to consider the probability of succeeding on causation

Calculation issues

Claimed circumstance	Pollution – ground condition		
Claimed impact	Additional mass replacement		
Claimed cost	Additional machinery		Additional man-hours
Condition 1	Documentation of direct cost	90,00%	Unit rates applicable 100,00%
Condition 2			Documentation of hours 85,00%
Aggregate probability		90,00%	85,00%

Claimed circumstance	Pollution – ground condition		
Claimed impact	16 days delay		
Claimed cost	Extension of time / LD		Operational cost
Condition 1	N/A	100,00%	Documented running cost extended duration 75,00%
Aggregate probability		100,00%	75,00%

Claimed circumstance	New control system requirements	
Claimed impact	Redesign	
Claimed cost	Direct cost of re-design	
Condition 1	Unit rates applicable	100,00%
Condition 2	Documented man-hours designer	95,00%
Aggregate probability		95,00%

Claimed circumstance	New control system requirements	
Claimed impact	Redesign	
Claimed cost	Direct cost – additional procurement cost	
Condition 1	Documented cost equipment original design and new design	90,00%
Aggregate probability		90,00%

- ... and risk in calculation³⁰

Returning to the claims overview

Pollution – ground conditions		
Additional mass replacement		
Impact	Claimed cost	Claim
1	Additional machinery	kr 4 200 000,00
2	Additional man-hours	kr 6 800 000,00
3	N/A	
16 days delay		
Impact	Claimed impact	Claim
1	Extension of time / LD	kr 8 000 000,00
2	Operational cost	kr 11 000 000,00
3	N/A	

New control system requirements		
Redesign		
Impact	Claimed cost	Claim
1	Direct cost – re-design	kr 1 500 000,00
2	N/A	
3	N/A	
Alternative CS hardware		
Impact	Claimed cost	Claim
1	Direct cost – additional procurement cost	kr 2 250 000,00
2	N/A	
3	N/A	

Aggregate claim
 Accepted claim
 Claimant settlement offer
 Defendant settlement offer

Sum total
kr 33 750 000,00
 kr 0,00
 kr 20 000 000,00
 kr 5 000 000,00

How does the claim look after assessing the probabilities?

Returning to the claims overview

Probability adjustment			Liability probability	Causation probability	Calculation probability	Aggregate probability	Probability adjusted claim
Pollution – ground conditions			61,56%	90,00%			
Additional mass replacement							
Impact	Claimed cost	Claim					
1	Additional machinery	kr 4 200 000,00					
2	Additional man-hours	kr 6 800 000,00					
3	N/A						
16 days delay							
Impact	Claimed Impact	Claim					
1	Extension of time / LD	kr 8 000 000,00					
2	Operational cost	kr 11 000 000,00					
3	N/A						
New control system requirements			68,00%	90,00%			
Redesign							
Impact	Claimed cost	Claim					
1	Direct cost – re-design	kr 1 500 000,00					
2	N/A						
3	N/A						
Alternative CS hardware							
Impact	Claimed cost	Claim					
1	Direct cost – additional procurement cost	kr 2 250 000,00					
2	N/A						
3	N/A						
Sum total					Sum total	kr 13 922 649,90	

Zone of agreement

- **Non-zero sum game (externalities)**
- Total litigation cost
- Total financing cost/gain
- *In a non-zero sum game a rational settlement may be reached without fully agreeing on the risk assessment*



Litigation cost claimant

	Principal claim	Settlement offered
Claimant	kr 33 750 000,00	kr 20 000 000,00
Defendant	kr 0,00	kr 5 000 000,00
Claimant mainly sucessfull	33,33%	Simple approximation of complex probability of continous values
Defendant mainly sucessfull	33,33%	
Neither party mainly sucessfull	33,33%	

First instance

Probability of litigation unless settled (potential claimant must use 100%)	100,00%	Estimate litigation cost	Probability	Risk adjusted litigation cost	Best case
Claimant cost		-2 000 000,00 NOK	66,67%	-1 333 333,33 NOK	kr 0,00
Defendant cost		-2 000 000,00 NOK	33,33%	-666 666,67 NOK	kr 0,00
Internal cost		-500 000,00 NOK	100,00%	-500 000,00 NOK	-500 000,00 NOK
Sum		-4 500 000,00 NOK		-2 500 000,00 NOK	-500 000,00 NOK

Appeal court

Probability of the other party's appeal if case is won fully	65,00%	Estimate litigation cost	Probability	Risk adjusted litigation cost	Best case
Claimant cost		-1 000 000,00 NOK	73,33%	-476 666,67 NOK	kr 0,00
Defendant cost		-1 000 000,00 NOK	36,67%	-238 333,33 NOK	kr 0,00
Internal cost		-200 000,00 NOK	100,00%	-130 000,00 NOK	kr 0,00
Sum		-2 200 000,00 NOK		-845 000,00 NOK	0,00 NOK

Supreme court

Probability of the other party's appeal if case is won fully	10,00%	Estimate litigation cost	Probability	Risk adjusted litigation cost	Best case
Claimant cost		-500 000,00 NOK	80,67%	-40 333,33 NOK	kr 0,00
Defendant cost		-500 000,00 NOK	40,33%	-20 166,67 NOK	kr 0,00
Internal cost		-100 000,00 NOK	100,00%	-10 000,00 NOK	kr 0,00
Sum		-1 100 000,00 NOK		-70 500,00 NOK	0,00 NOK

Sum Legal cost

Estimate litigation cost	Risk adjusted litigation cost	Best case
-kr 7 800 000,00	-kr 3 415 500,00	-kr 500 000,00

Litigation cost defendant

	Principal claim	Settlement offered
Claimant	-kr 33 750 000,00	-kr 20 000 000,00
Defendant	kr 0,00	-kr 5 000 000,00
Claimant mainly successful	33,33%	Simple approximation of complex probability of continuous values
Defendant mainly successful	33,33%	
Neither party mainly successful	33,33%	

First Instance

Probability of litigation unless settled (potential claimant must use 100%)	75,00%	Estimate litigation cost	Probability	Risk adjusted litigation cost	Best case
Claimant cost		-2 000 000,00 NOK	66,67%	-1 000 000,00 NOK	kr 0,00
Defendant cost		-2 000 000,00 NOK	33,33%	-500 000,00 NOK	kr 0,00
Internal cost		-500 000,00 NOK	100,00%	-375 000,00 NOK	-500 000,00 NOK
	Sum	-4 500 000,00 NOK		-1 875 000,00 NOK	-500 000,00 NOK

Appeal court

Probability of the other party's appeal if case is won fully	50,00%	Estimate litigation cost	Probability	Risk adjusted litigation cost	Best case
Claimant cost		-1 000 000,00 NOK	73,33%	-366 666,67 NOK	kr 0,00
Defendant cost		-1 000 000,00 NOK	36,67%	-183 333,33 NOK	kr 0,00
Internal cost		-200 000,00 NOK	100,00%	-100 000,00 NOK	kr 0,00
	Sum	-2 200 000,00 NOK		-650 000,00 NOK	0,00 NOK

Supreme court

Probability of the other party's appeal if case is won fully	5,00%	Estimate litigation cost	Probability	Risk adjusted litigation cost	Best case
Claimant cost		-500 000,00 NOK	80,67%	-20 166,67 NOK	kr 0,00
Defendant cost		-500 000,00 NOK	40,33%	-10 083,33 NOK	kr 0,00
Internal cost		-100 000,00 NOK	100,00%	-5 000,00 NOK	kr 0,00
	Sum	-1 100 000,00 NOK		-35 250,00 NOK	0,00 NOK

Sum Legal cost

Estimate litigation cost	Risk adjusted litigation cost	Best case
-kr 7 800 000,00	-kr 2 560 250,00	-kr 500 000,00

Zone of agreement		
Outcomes	Claimant	Defendant
Status quo – settlement offers	kr 5 000 000,00	kr 20 000 000,00
Best case (eks VAT) litigation	kr 33 250 000,00	-kr 500 000,00
Worst case (eks VAT) litigation	-kr 7 800 000,00	-kr 41 550 000,00
Riskadjusted value (eks mva)	kr 10 507 149,90	kr 16 482 899,90

Any settlement amount above this amount will in principle be more rational for the claimant than litigation

Any settlement amount below this amount will in principle be more rational for the defendant than litigation

When and where to settle?

- Do the parties assess risk similarly?
- Who needs to initiate litigation?
- Can you call a bluff without substantially increasing risk?
- Does the other party believe that you will litigate?

Complexity

- Identifying all potentially disputes issues and accurately assessing probabilities is a daunting task.
- However, neither this complexity, nor the inherent uncertainties in litigation, should deter us from trying to improve our aim.
- We believe there is much to be learned and gained from statistics, probabilities and game theory.





Ready to play poker

Top 3 from each table will proceed to the final table

We start on the flop, playing with a small blind, a big blind and antes

Everyone will start with 20 bigblinds and one extra life

You can go all-in or fold

Final table will be a normal (but quick) poker tournament

How much will you gain by winning, how much could you lose?

How much does your opponent(s) stand to win or lose?

Look to be very careful with multiple opponents behind you, and very aggressive with only one

Strong draws can be powerful



First round is not about winning all the chips, it's about surviving
Avoid calling when not very confident in your winning chances
Know who you can pressurize!

Thank you!



100



500



1000

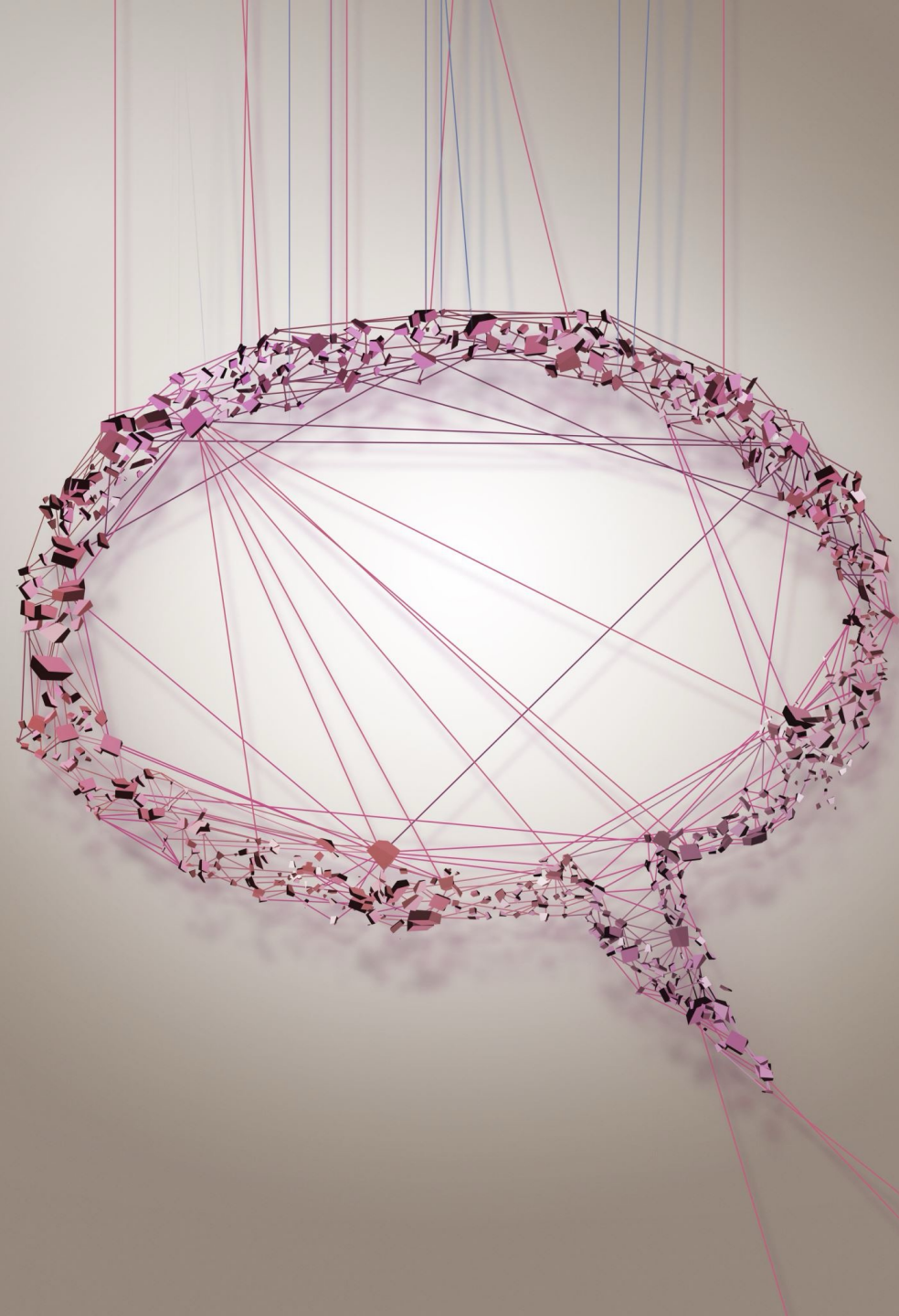


Extra lif



**THE SINGLE BIGGEST
PROBLEM IN
COMMUNICATION IS
THE ILLUSION THAT IT
HAS TAKEN PLACE**

George Bernard Shaw





Herman Bruserud

Associate Professor PhD, Department of Law at University of Oslo

Topic: Update on relevant court decisions



Ragnar Lindefjeld

Judge at the Oslo District Court

Topic: The pros and cons of meditation

www.naccm.no

Who am I to talk?



Contracts lawyer since 2000

Judge since 2015

Master's degree in conflict management and mediation from 2020

Extensive mediation practice (mostly court assisted, but also PRIME, as well as teaching judges and lawyers)



THE PROS AND CONS OF MEDIATION

Ragnar Lindefjeld
Halden, 10 october
2024

Need to know

- Something about conflicts
- Something about negotiations and what good negotiators do
- Something about mediation and what to expect from a decent mediator
- Then, and only then, you can weigh the pros and cons in a meaningful way





Need to know #1-conflict basics



The source of many conflicts

- Monkey Business

Remember this about conflict

- Disagreement + dependence = conflict
- Conflicts are neutral - conflict management is not
- Conflicts encompass way more than the legal dispute
- Conflicts always have a material aspect, a relational aspect, and often a procedural aspect
- Most of us act pretty stupidly in a conflict situation

Conflict behaviour drives conflict outcomes

Concern for
me

My Way

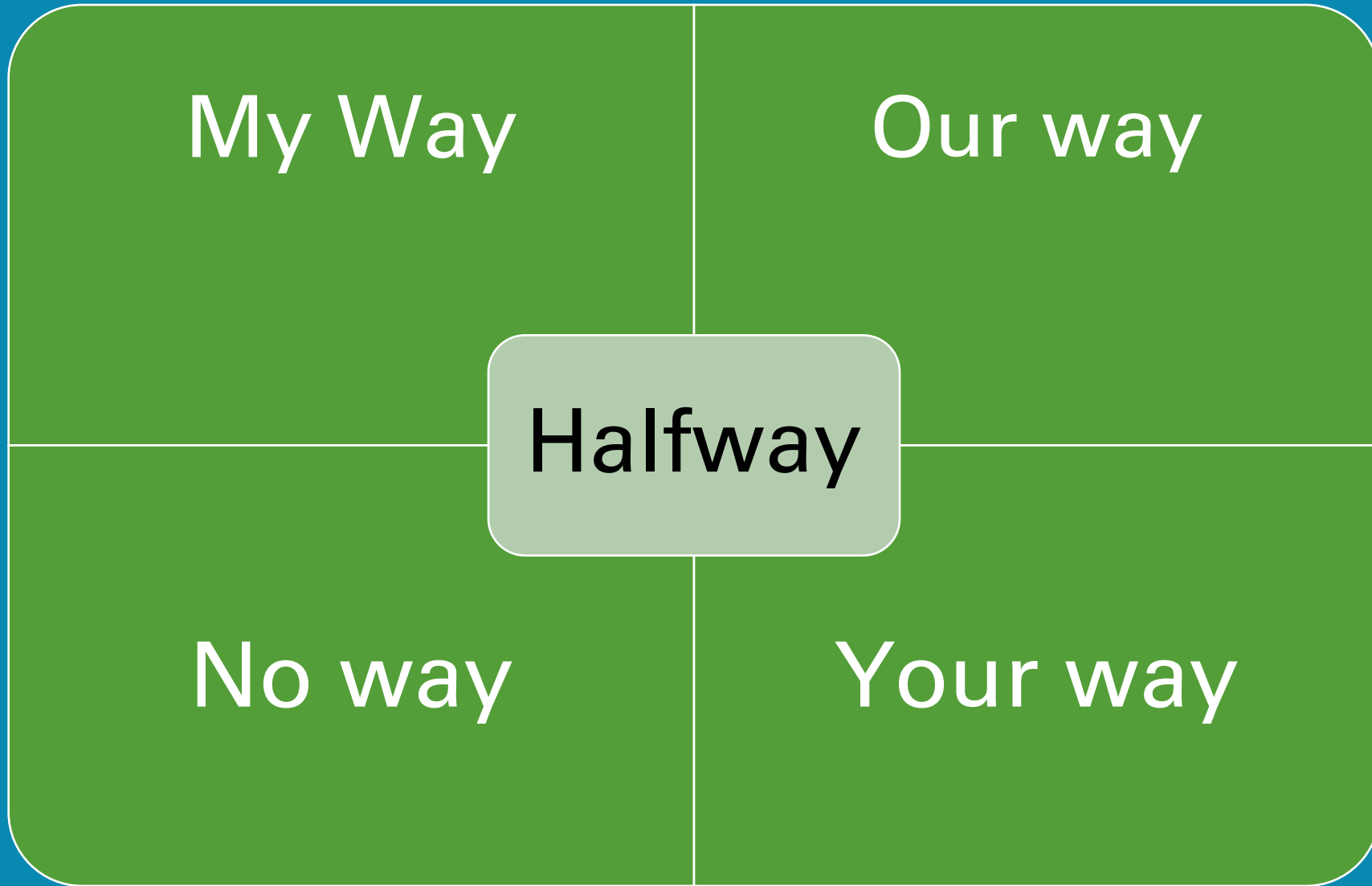
Our way

Halfway

No way

Your way

Concern for you





Need to know #2-negotiation basics

A color photograph of Winston Churchill sitting at his desk. He is wearing a dark suit and a bow tie, looking directly at the camera with a serious expression. Behind him is a large world map on the wall. To his right is a desk lamp with a yellow shade. On his desk are some papers and a rotary telephone.

**TO NEGOTIATE OR NOT TO
NEGOTIATE?**

Are you a
value
creator or
a value
capturer?

Divide or expand pie?

Ask or argue?

Care about one or both parties?

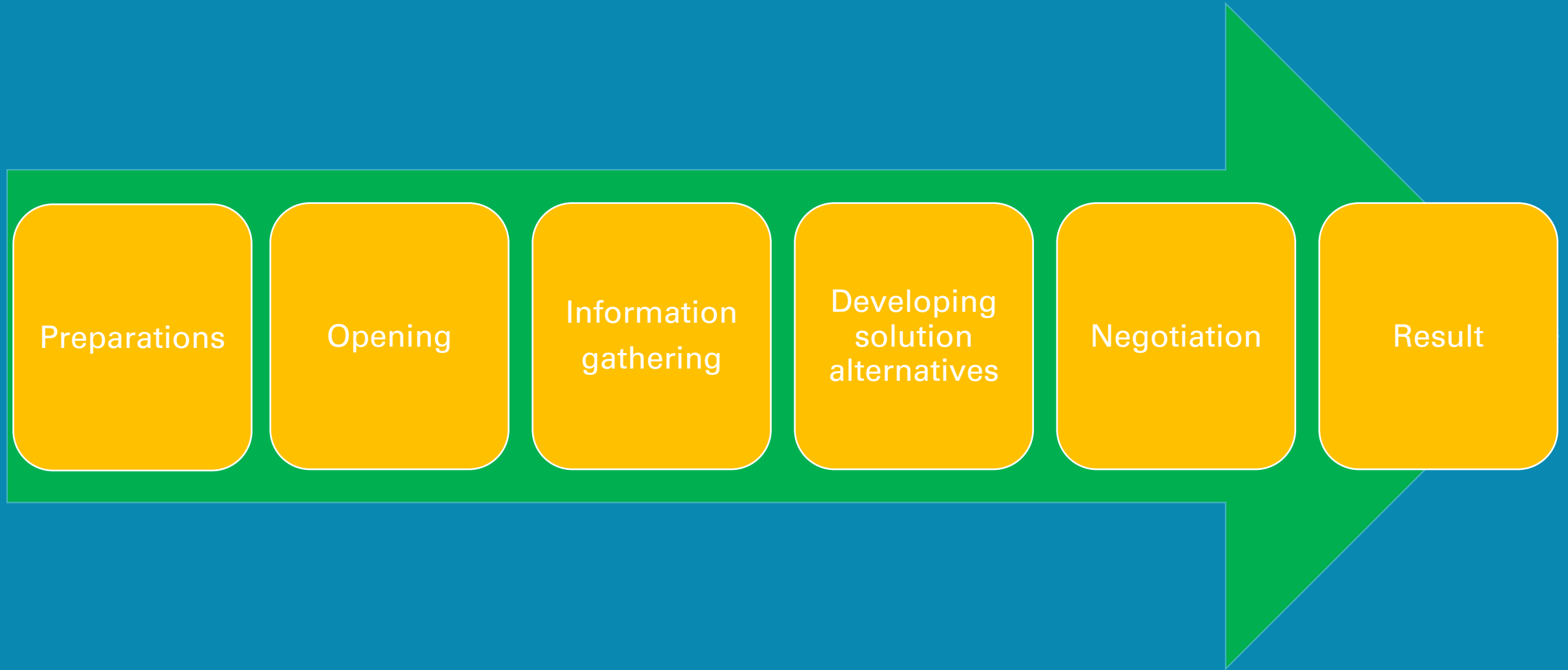
Focus on positions or interests?

Past wrongs or future rights?

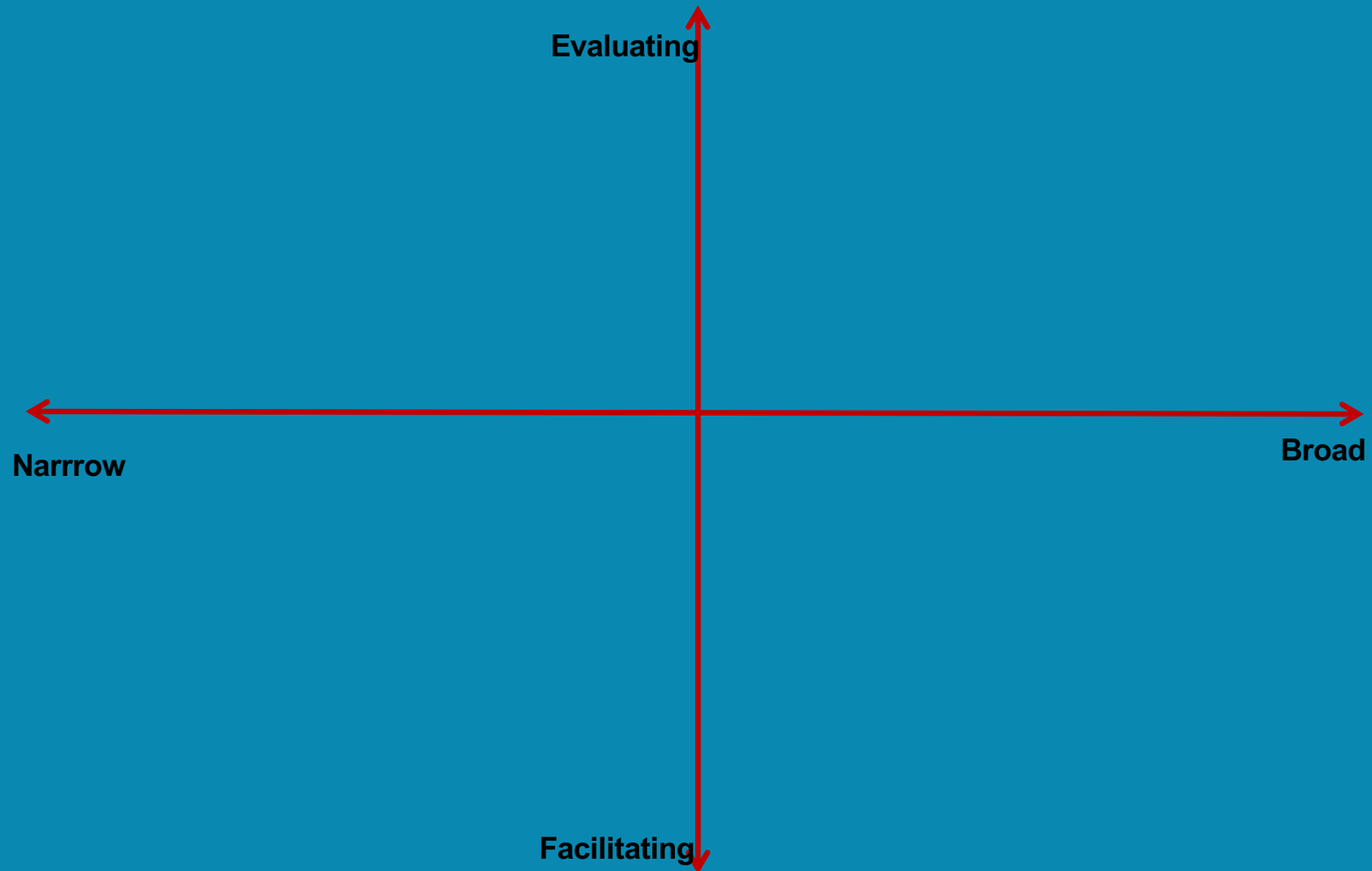


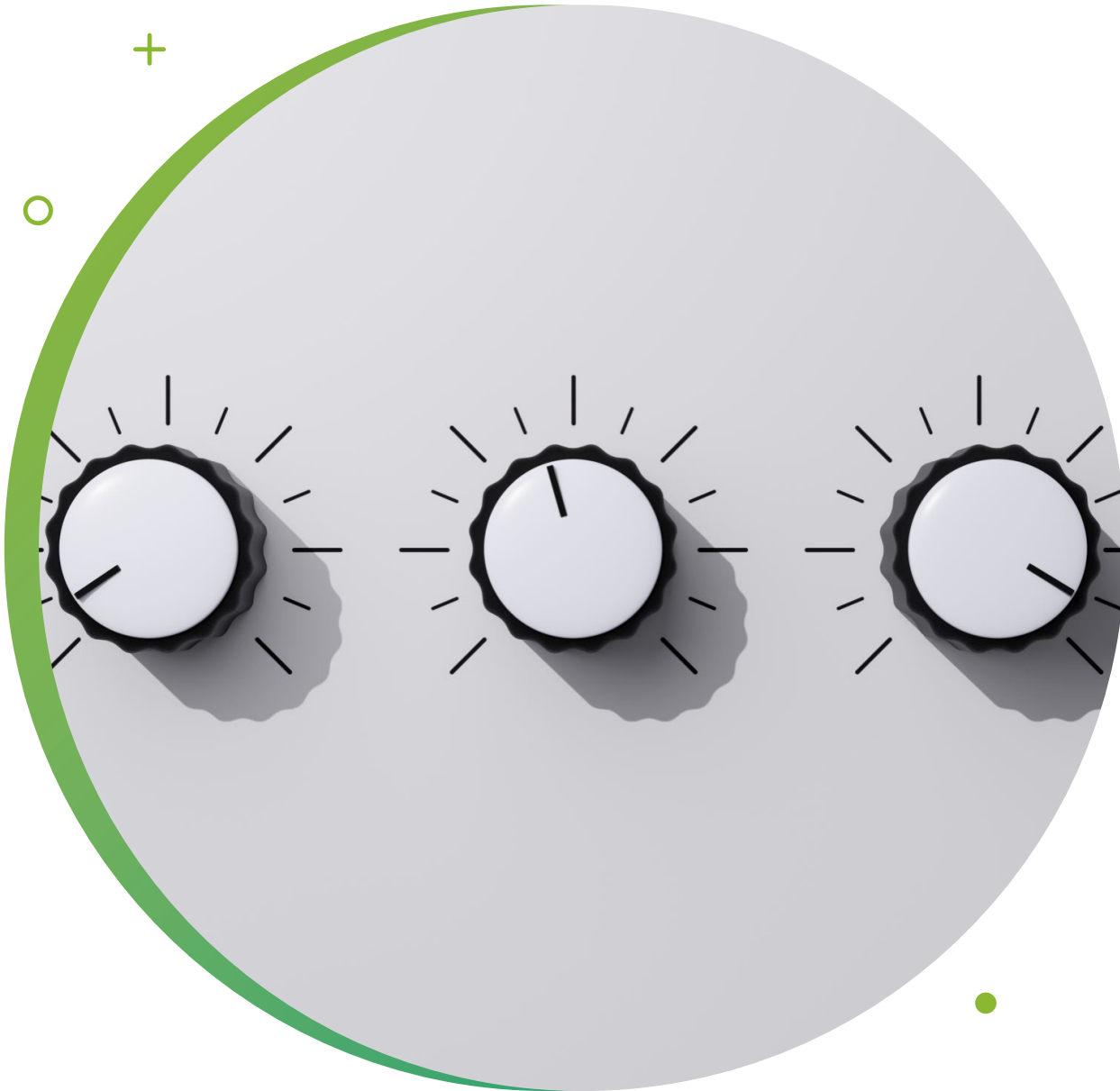
Need to know #3-mediation basics

The mediation process



How does a mediator work?





THE PROS

- Stay in control
 - Of the process
 - Of whether to settle
- Manage risk
 - Legal
 - Operational
 - Financial
- Limit losses and create value
 - In this dispute
 - In future
- It is the smart person's way to solve disputes



THE CONS

- You can get played by bad-faith counterparties
 - Extract your positions and arguments and use them against you
- it can further damage already vulnerable relationships
 - It can reduce the chance of future interactions being positive
- It can be costly if unsuccessful
 - No explanation needed

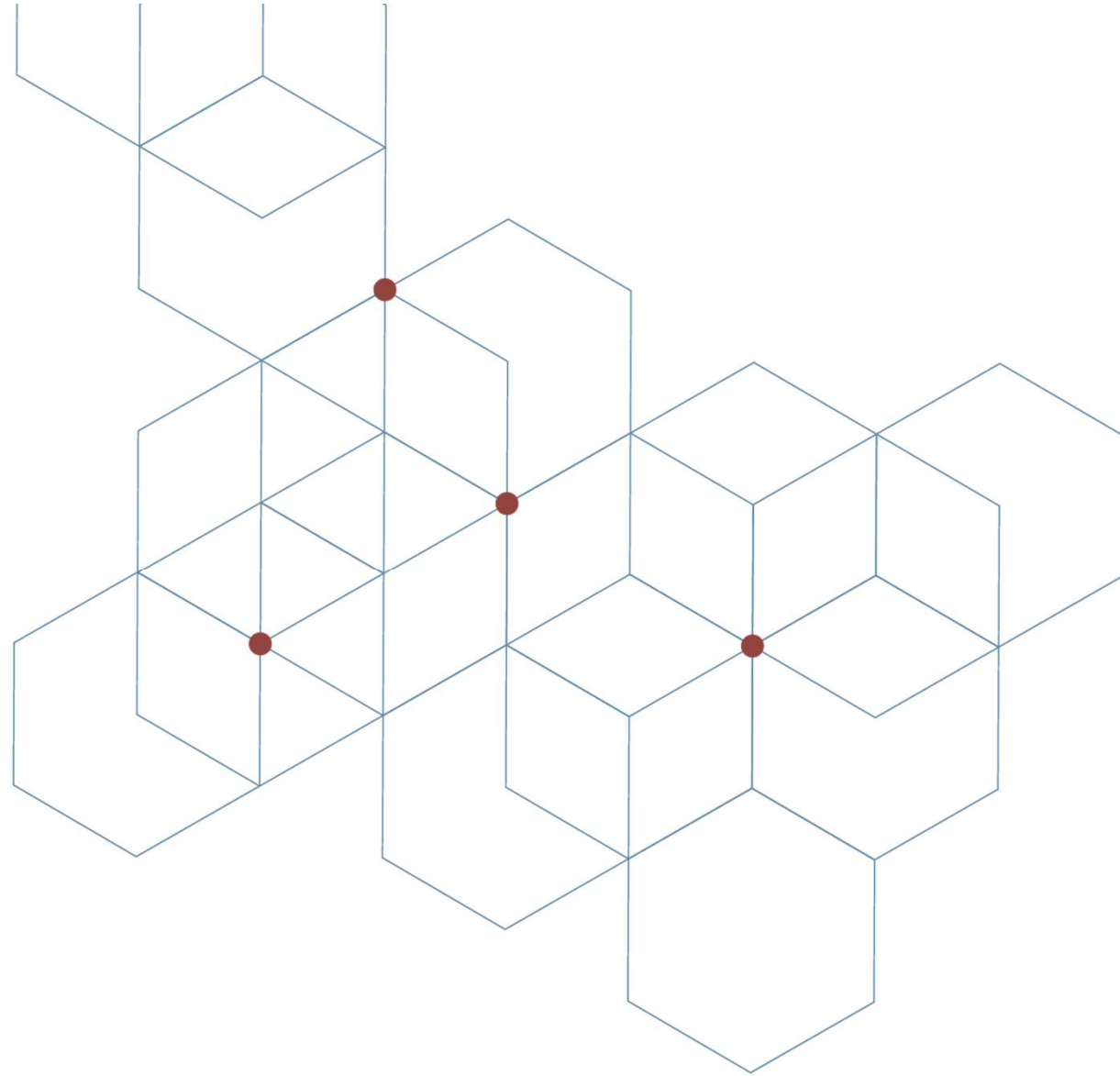
Data and Transparency

**Your best friends to
deliver projects**

**and reduce and resolve
disagreements as a
by-product**

Anders Killander 20241010

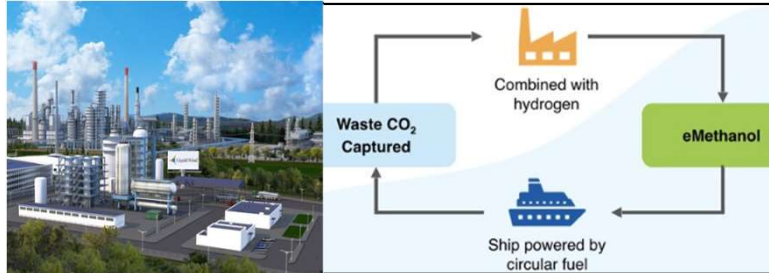
anders.Killander@xerab.se



EXAMPLES OF XER IMPLEMENTATIONS - PROJECT CONTROL SYSTEMS



Käppala Sewer Plant, Stockholm



LiquidWind Methanol Plants



Odfjell - OceanWind



SGRE - Vejle



Aquafin Sludge Plant, Gent



Bombardier - Globally



ELIA - Belgian Grid



Eco Data Center, Falun



H2 GreenSteel, Boden

IMPLEMENTATION IS....

Analysis and Assessment

- Where are you today, how do you deliver projects, contract formats used
- What is your ambition / ability for the organization to change

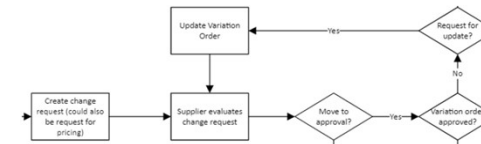


Process mapping/development

- Model and make processes explicit
- What data is needed where and by whom

Systems /Tools selection

- Best fit for purpose
- Best fit for organization (.... and their maturity situation)



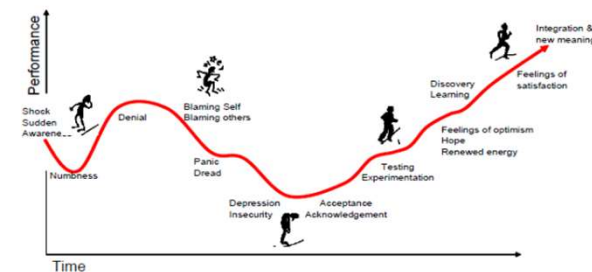
Actual Configuration, Training, support support support support

- Agree on common metadata / codes for PBS, WBS, CBS etc
- Step by step , process by process

Change Management is key

- Internal acceptance – planning and support people
- Identify staff/participants willing to change and try new ways

Transitions Curve



Planning, Cost, Contracts, Risk and Information Processes

(that should be) managed in every project

Planning

- Scheduling
- Resources
- Options
- Uncertainty analysis

Document Mgt

- Placeholders
- File distribution
- Transmittals
- Version control
- Shop drawings
- Relationships

Workflows

- Design reviews
- Approval processes
- “Ball in court” tracking
- Procurement

Issues & Forms

- Change Mgmt
- HSE
- Delays & EoTs
- Issues
- Technical queries

Packages Mgmt

- Define Packages
- Manage Package
- Close out Package
- Monitoring
- Reporting

Inspections

- Defects / snags
- Safety inspections
- Incomplete works
- Commissioning
- Daily safety rounds

Plan

Bid

Design

Construct

Operate

Cost

- Budget
- Procurement
- Contracts
- Variations
- Payments
- Claims

Risk

- Risk Registers
- Risk Simulations
- Risk Management

Interface Mgmt

- Interface Agreements
- Interface Queries
- Interface Resolutions
- Interface Reporting

BIM/Models

- Communication
- Coordination
- Enriched models
- Agnostic to any “brand” like Revit, Bentley, Tekla, etc

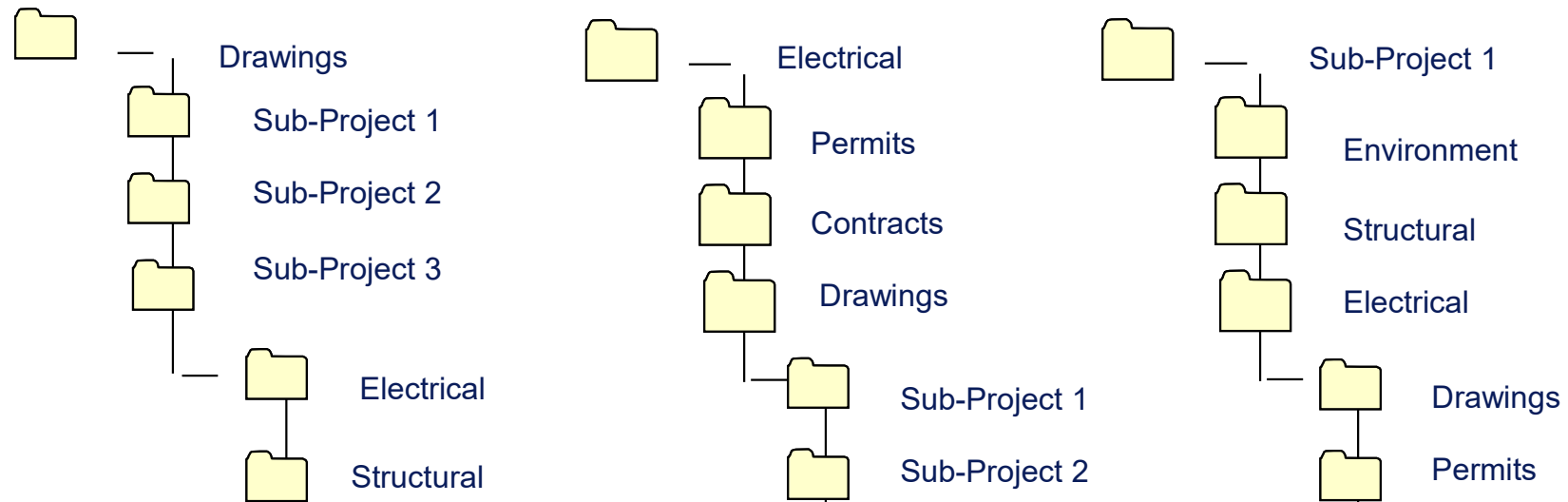
O&M / Deliverables

- Digital structure, data and models to Owner
- Handover planning
- Handover approval processes
- O&M manuals
- Vendor documents

Increased possibility to capture data



Shared Folder or Metadata approach ?



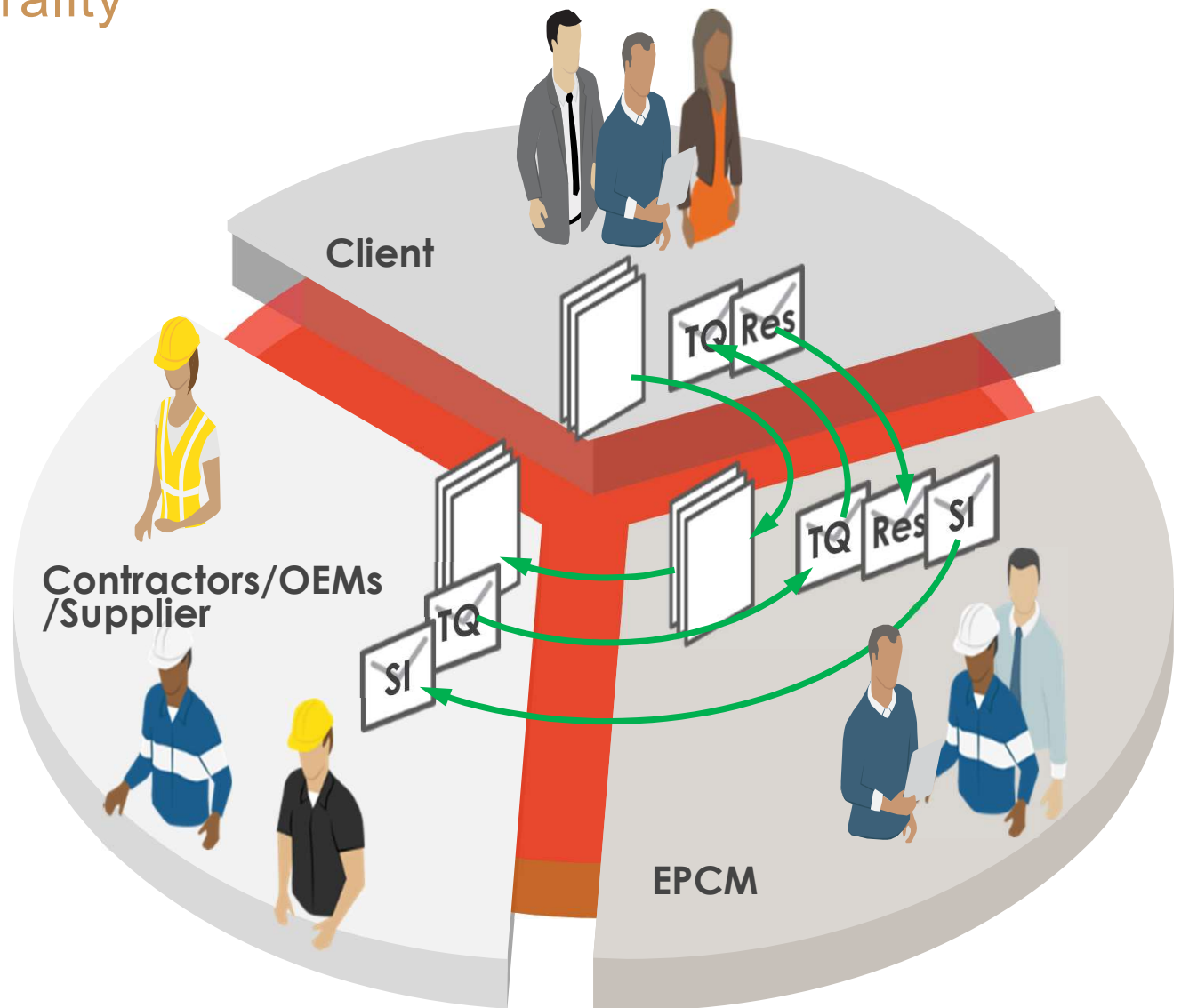
What if you today want to search for “All Contracts” but next week want to find “All Sub-Project 1” related documents or “All Permits from Jan -2022 to Dec-2022” ? Can one static folder structure really support that?

A static folder structure supports only one of many views: PM's, Design Manager's, Consultant's, Contractor's or Owners Operation team's view. Your need will also change over time...

No one single folder structure is suitable for all, as the participants needs are different. Metadata allows each user/group/team to create their own view of the data

Project Data and Neutrality

- Respect the ownership of data
- Contractual boundaries must be upheld
- Transparency (*but only for items you have sent/received*)
- Items not sent to you will not be seen by you
- Trust
- Accepted by all participants
- Data shall only be entered once (Single source of truth)



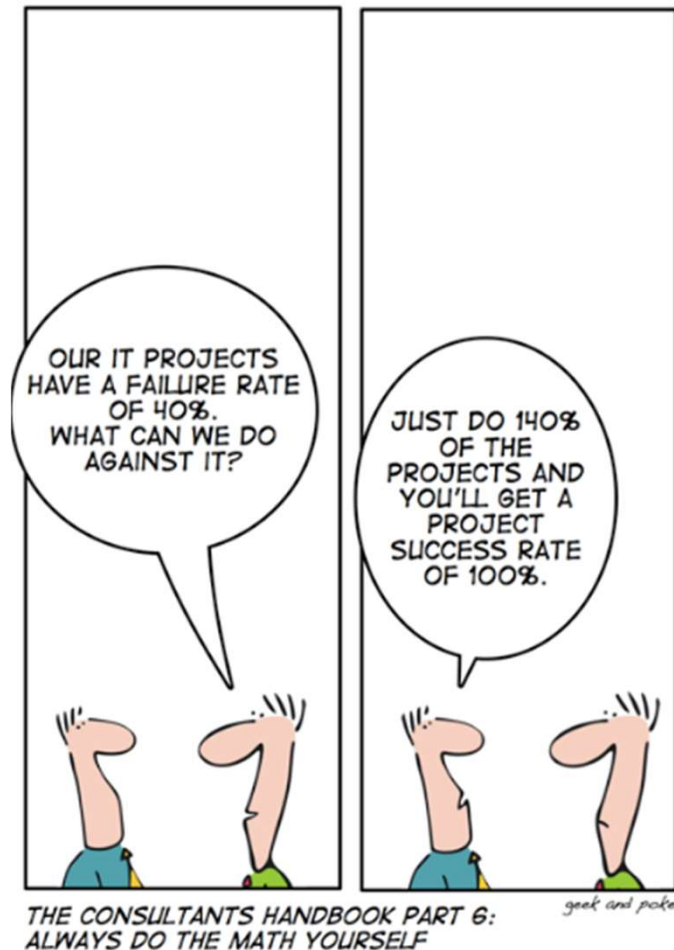
USING DATA TO WRITE BETTER CONTRACTS

Know what is possible

- Set the bar a bit high
- But not too high
- No one wants to fail

Don't write unrealistic demands/response times

- Know what is common/standard
- Don't set values that will never be
(ie don't state 7 days response time, when data shows average response time is 12-13 days)



Response time averages – RFI/TQ/NCR/Variations/Changes



Metro Projects, using CDE
Global Average (+100 projects)
6.8 Days

All Projects, using CDE
Global Average
8.9 Days

Projects NOT
Using CDE
14.7 Days

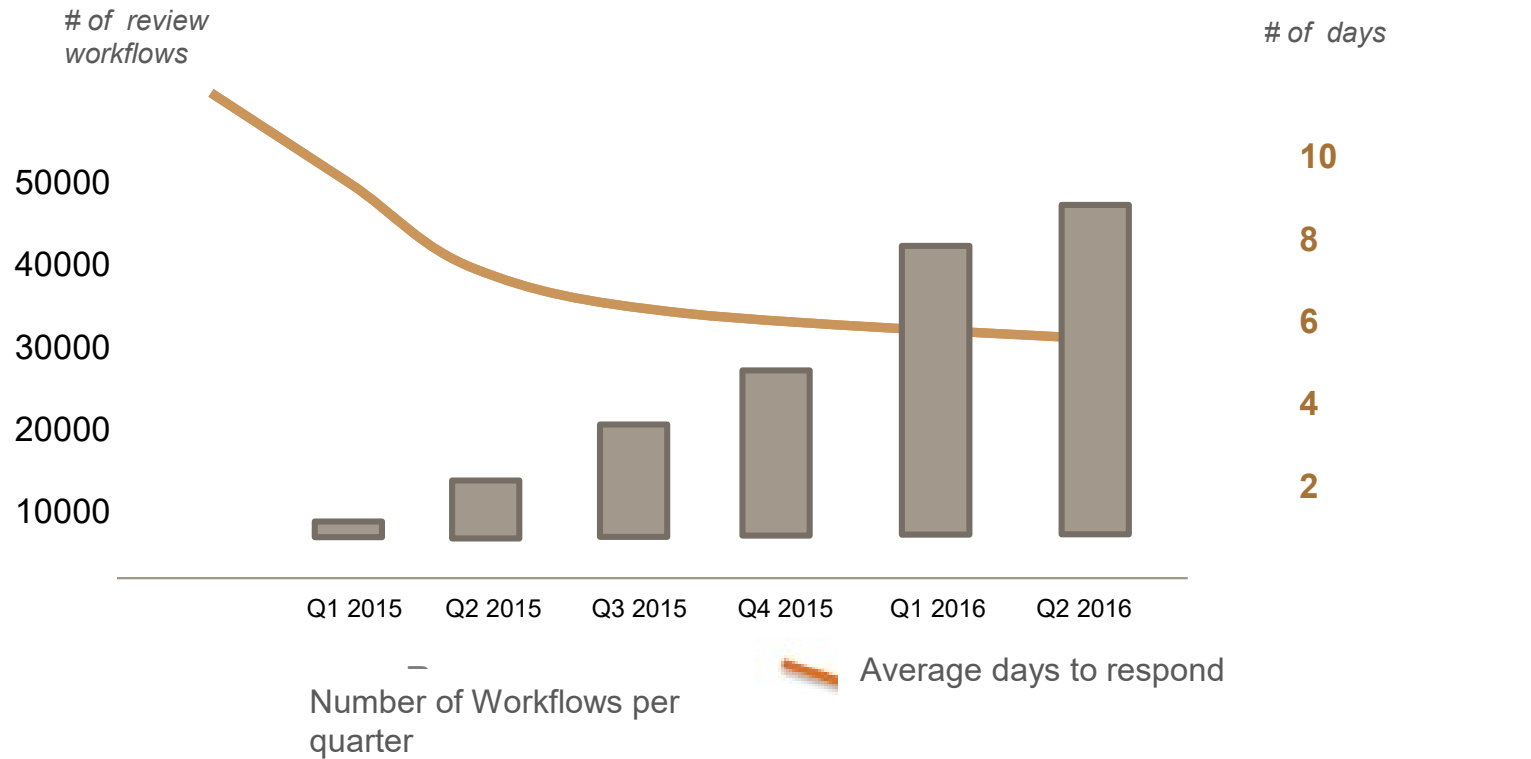
Riyadh Metro
Average
4.2 Days



Statistical data extracted from 14,000 projects globally during 2000 to 2015

RIYADH METRO PROGRAM (3 SEPARATE EPC JV TEAMS)

EPC TEAM'S PERFORMANCE: DRAWING REVIEW WORKFLOW - RESPONSE OVER TIME



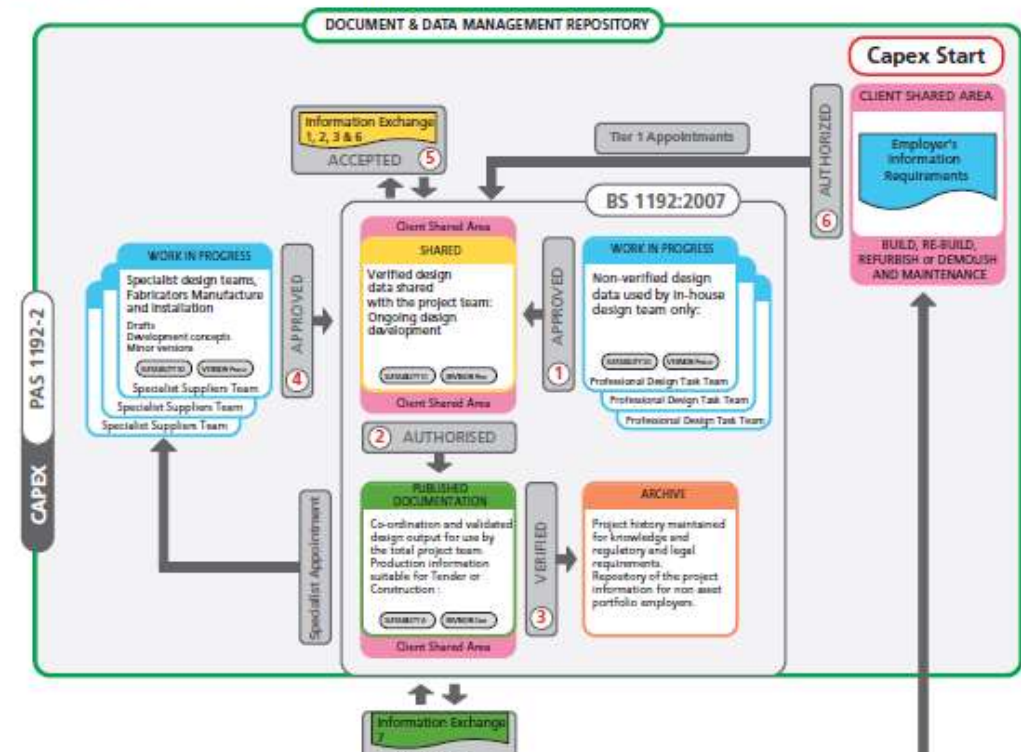
*Observations: After only 6 months the response times dropped from +10 => 6 days
In the following 12 months dropped to 5 days, even if volumes quadrupled
=> **Processes are stable and volume independent !***

STICK TO STANDARDS

- ISO 19650, CDE
- IFC
- COBie
- BCF
- RDS



Figure 15 – Extending the common data environment (CDE)



DIGITALA FORMULÄR – AUTOMATISKA DASHBOARDS OCH RAPPORTER

AUTODESK Construction Cloud

Build ▾

H205 Test ▾

Home
Sheets
Files
Forms
Photos
RFIs
Submittals
Meetings
Schedule
Assets
Reports
Members
Bridge
Settings

Forms
Incident Report

This draft is visible to reviewers.

Form Details

Form date
6/8/2022

ID
#29

Location
CAS - Casting Plant

Description
Lift Injury

Editable only by Anders Killander
Currently visible to one reviewer

References
Add references ▾

Add references to other objects or project files.

1.3 Date of Incident *
5/10/2022
Photos Issues Note

1.4 Time of Incident *
1045
Photos Issues Note

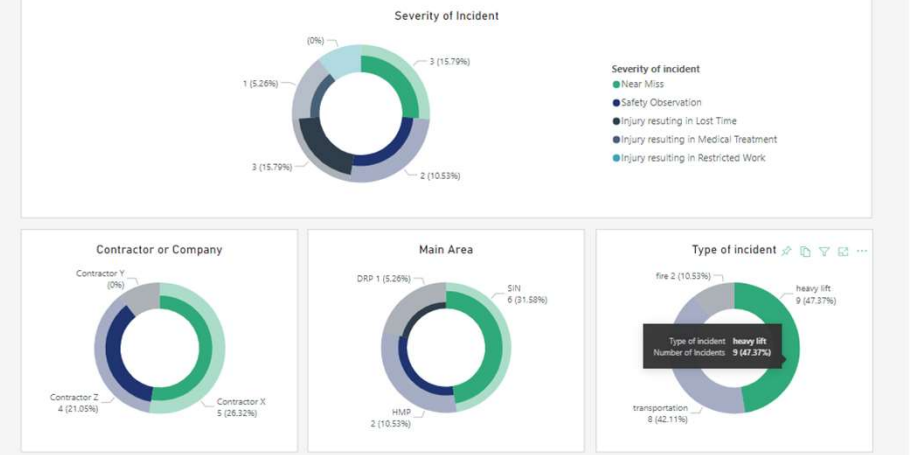
1.5 Company who reported the incident
H205
Photos Issues Note

1.6 Description of Incident
lifting chain came off during lift, beam fell and one injured steel erection staff
Photos Issues Note

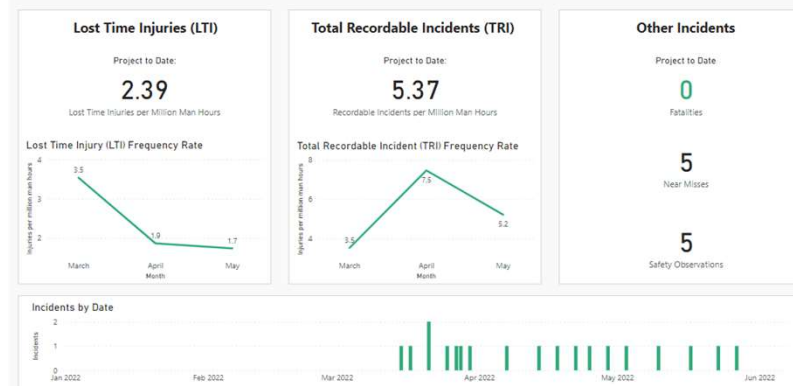
1.7 Type of Incident *
☐ Electric
☐ Environmental / Spill
☐ Fire
☒ Heavy lift
☐ Transportation
☐ Welding / Hot Work / Burn
Photos Issues Note

1.8 Severity of Incident *
☐ Safety Observation
☐ Near Miss
☒ Injury resulting in Lost Time (no medical treatment needed)
☐ Injury resulting in Restricted Work
☐ Injury resulting in Medical Treatment

Health & Safety Causes



Health & Safety Summary



East and North Haverfordshire NHS

Agenda Item: 20

TRUST BOARD - 30th MARCH 2021

East and North Haverfordshire NHS

Agenda Item: 20

TRUST BOARD - 30th MARCH 2021

SAFETY AND SECURITY REPORT

PURPOSE: To inform the Board of issues relating to Safety & Security, covering the period from April 2010 to 31 February 2011.

PREVIOUSLY CONSIDERED BY: The Risk & Quality Committee

IMPLICATIONS: To improve the quality of all aspects of our services.

Risk Issues: Compliance with health, safety & security legislation. Non-compliance with trust policies and procedures.

Health & Safety: Health & Safety forms part of the trust's statement of internal control. Compliance with HSM 02.

Financial: Potential fines and litigation.

Equality: Compliance with mandatory training.

Legal Issues: Health & Safety, Executive, Standards for Better Health and Future Healthcare regulations, HSA, HSCF 1999, Secretary of State, Director, Criminal Justice and Immigration Act.

Equality Issues: None identified.

RECOMMENDATIONS

The Board are asked to note the report.

DIRECTOR: Director of Nursing / CQC

PREPARED BY: Acting Director of Nursing / CQC

AUTHOR: Safety & Security Manager / SSB

DATE: March 2011

NACCM 2024

Lars C Eriksen

Nexans

Nexans – G&T

- Generation & Transmission - High Voltage in a Nutshell

CO-CREATION OF VALUE WITH CLIENTS

Focus on frame agreements and long-term partnerships with selected clients in Europe and the US

Offices close to our main customers

Norway, France, UK,
Germany, US

€6bn+
Backlog

4 HV plants
Norway, US, Belgium,
Japan

2 Main Businesses
Interconnections
Offshore Wind Farms

2,800

Employees in G&T

€1bn~

Invested since 2018 to increase capacity
in Manufacturing & Installation with a
focus on HVDC expansion

2 vessels

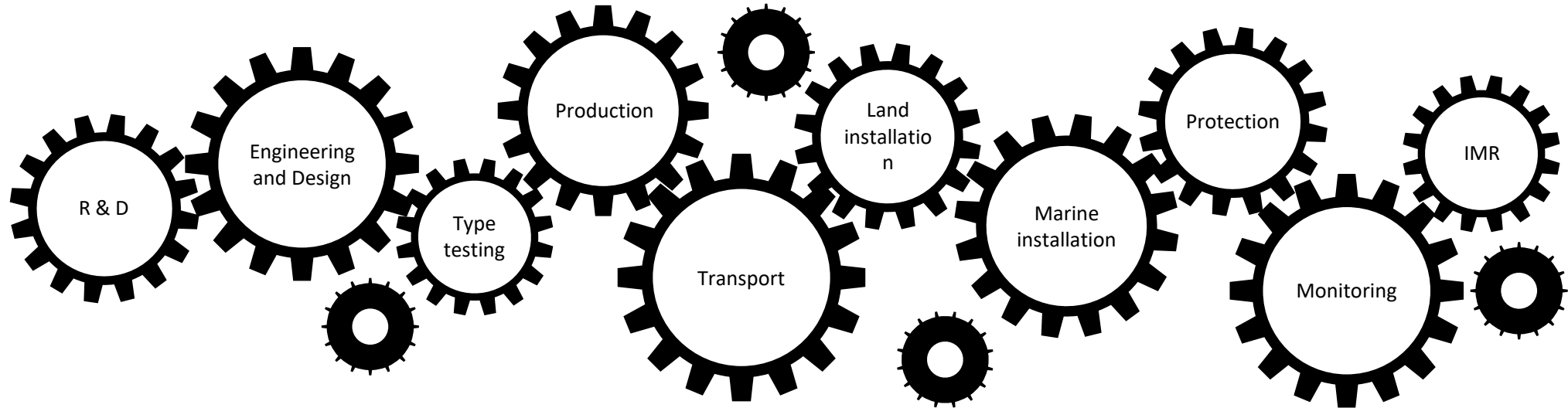
+ 1 additional CLV under
construction
+ 3 barges

16,000

km of subsea cables
successfully manufactured,
installed and buried



End-to-end solution provider



Engineering & Design	Qualification and Type Testing	Manufacturing & Routine Testing	Procurement & Subcontracting	Installation and protection	Land installation	Business continuity solutions
FEED Skilled project managers and technical teams	Project specific Qualification and Verification programs Risk Management	Long proven track record All technologies for complex turnkey cable projects	Civil works Rock dumping Accessories	Surveys and preparation works Pull-in, cable laying & burial Jetting, trenching	Civil works Cable pulling Cable terminations & jointing Sub-contracts	Asset Management Inspection Maintenance & Repairs (IMR)

Contract Management Department

Why building a



What are the Key Contract Management Activities – “Managing Contracts”

Drafting and Negotiation

- Creating contract documents that clearly define the terms, conditions, and expectations of all parties.
- Engaging in negotiations – incl. expert support to other functions

Risk Management

- Identifying risks associated with terms and conditions/scope/schedule/suppliers etc.
- Developing and implementing strategies to mitigate risks
- Placing into context

Dispute avoidance and resolution

- Establishing protocols for addressing disputes or issues that arise during the contract period.
- Utilizing mediation, arbitration, or legal avenues when necessary.

Performance Monitoring:

- Ensuring all parties adhere to the contractual obligations and regulatory requirements.
- Regular audits and reviews to identify any compliance issues.
- Tracking the performance of parties involved in the contract.
- Using key performance indicators (KPIs) to assess adherence to timelines and deliverables

Change Management:

- Managing amendments and modifications to contracts as projects evolve.
- Ensuring that changes are documented and agreed upon by all parties.

Why do you need Contract Management

Today, in projects;

Increasing **Complexity**

Increasing **Scale/Size** of projects

Increasing number of **requirements** to monitor

Decrease of “gentlemen agreements” and more willingness to “use the contract”

Lower threshold to litigate/formal **dispute resolution**

Higher demands on **formalism**

Why
building a



**Contract
Management
Department**

The alternatives ... to building ...

Internal Team with hired-in “experts”/ consultants

Internal Team with “capacity” additions

System solutions

Outsourced solutions

Why
building a



**Contract
Management
Department**

Pros of Building a Contract Management Department

Ownership and Accountability

Internal is always better

Enhanced Compliance and Risk Management

Dedicated team to monitor contract compliance

Team well known and available to the wider business

Improved Efficiency

Streamlines contract processes – expertise available to establish the right processes and to provide expert input to other functions processes

Strategic Alignment

Long term view aligns contracting approach with company goals.

Facilitates informed decision-making and the best advice.

Knowledge Retention and Development

Centralized repository of contract information.

Builds expertise within the CM organization and in the wider business

Cons of Building a Contract Management Department

Takes time

No “department in a box” available

Costs

High running costs

Overhead and Bureaucracy

Increased administrative burden

Risk of slowing down decision-making processes or over-complicating

Flexibility

Reduced contract awareness in other functions

Constant risk of bottleneck if the department is not adequately staffed or set up

Takes long time to adjust capacity (hire/fire)

Competency

Need experienced and competent managers, at several levels, to manage

Little “new” experience will come in and lack of outside impulses

My preferences and discussion ?

At a certain scale of operations - Can you afford not to have it?

Is “high running cost” really an issue ?

Is an engagement really “external” if it goes on for 2-4 years to ensure continuity?

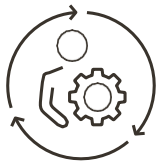
What do you tell a staff CM paid $\frac{1}{2}$ of its “same competency” hired-in neighbour?

Can you afford that key competency leaves?

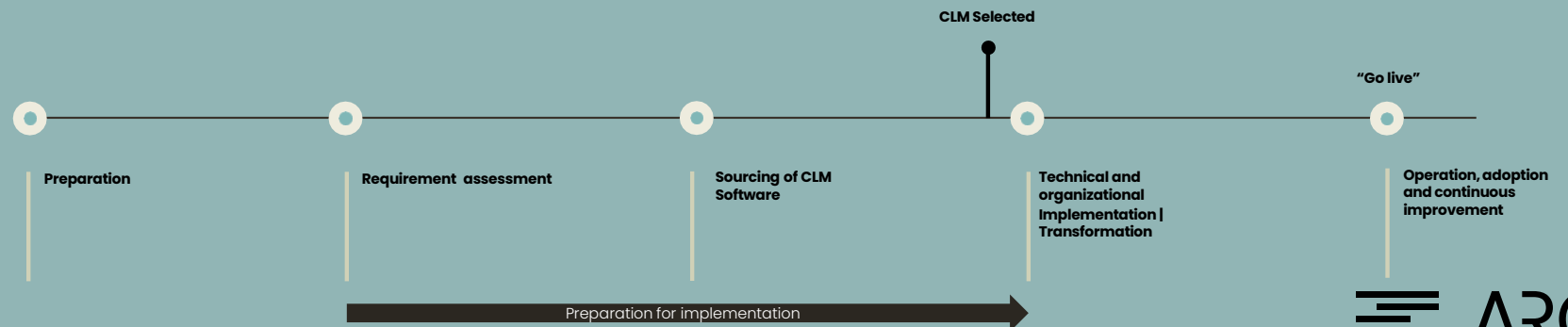


Contract Lifecycle Management

NACCM – Halden Workshop 2024



*Streamlined process with
standard tools and market
insight to save time and cost*



An expert consulting firm focusing solely on Contract Management – and therefore also CLM Software

Contract Management operating model

[More information →](#)

Operational Contract Management

[More information →](#)

CLM Software selection

[More information →](#)

CLM Software implementation

[More information →](#)

Our vision is to empower people and organizations to achieve Contract Management Excellence for better operational performance, increased compliance and improved financial value

Some of the clients that we are proud to be serving

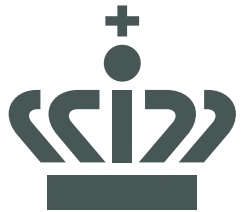
NORLYS



ENERGINET

SAS

nne[®]
novo nordisk engineering



Danish Defence

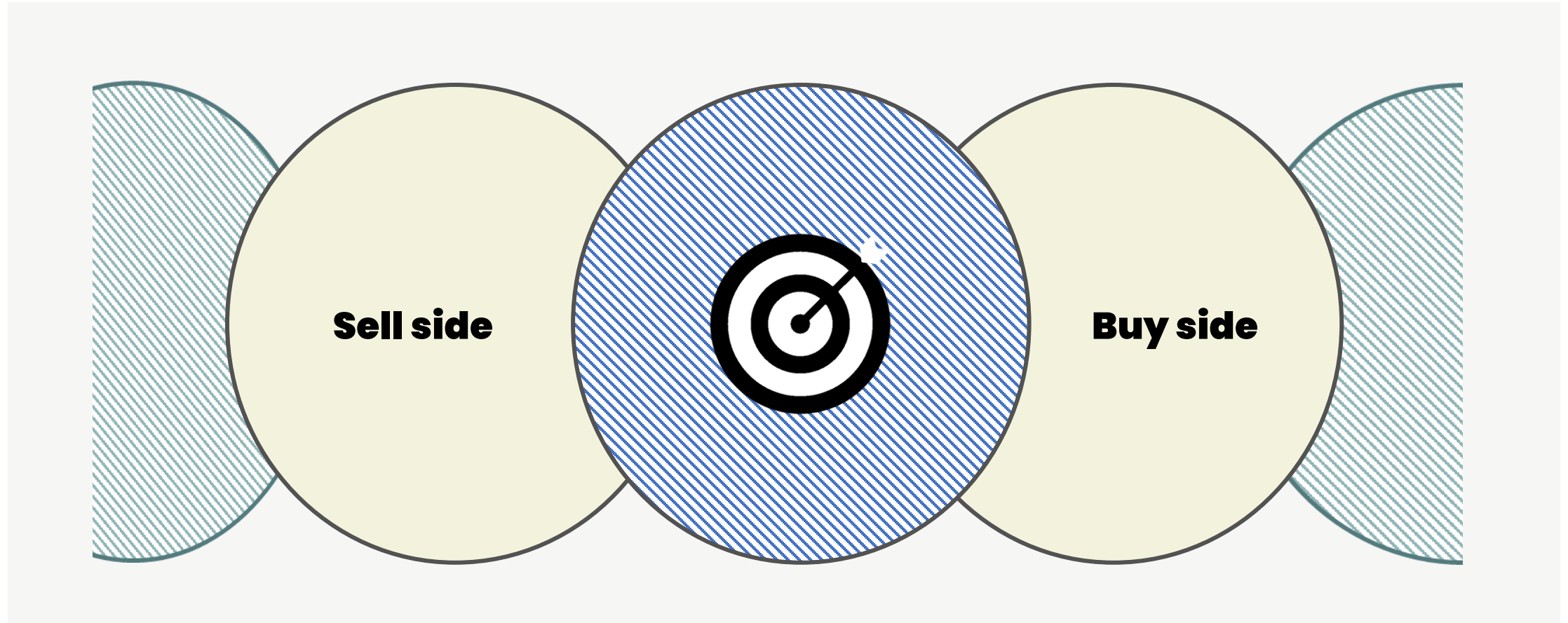




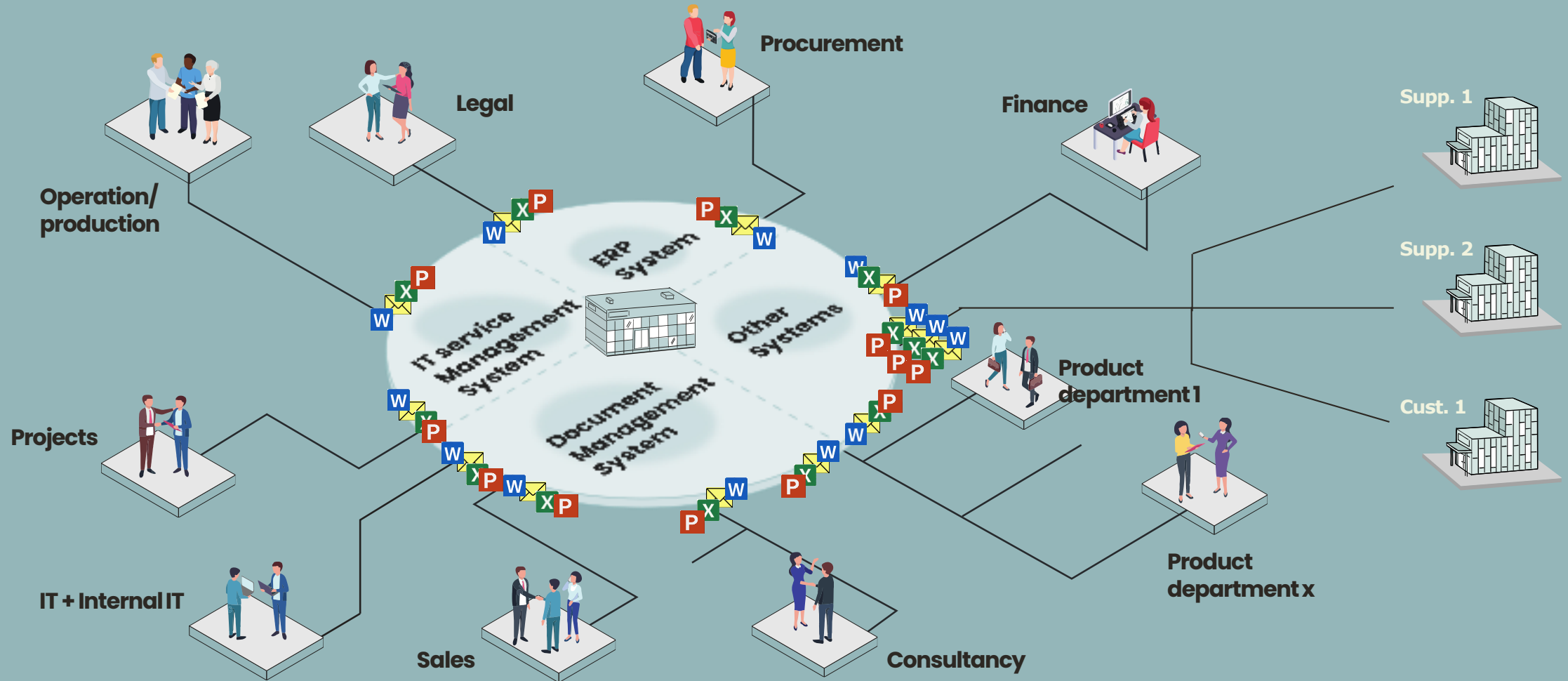
Agenda

1. **Setting the scene**
2. **CLM in short**
3. **The Contract Lifecycle and the functionality to support**
4. **The fundamentals for a successful implementation**

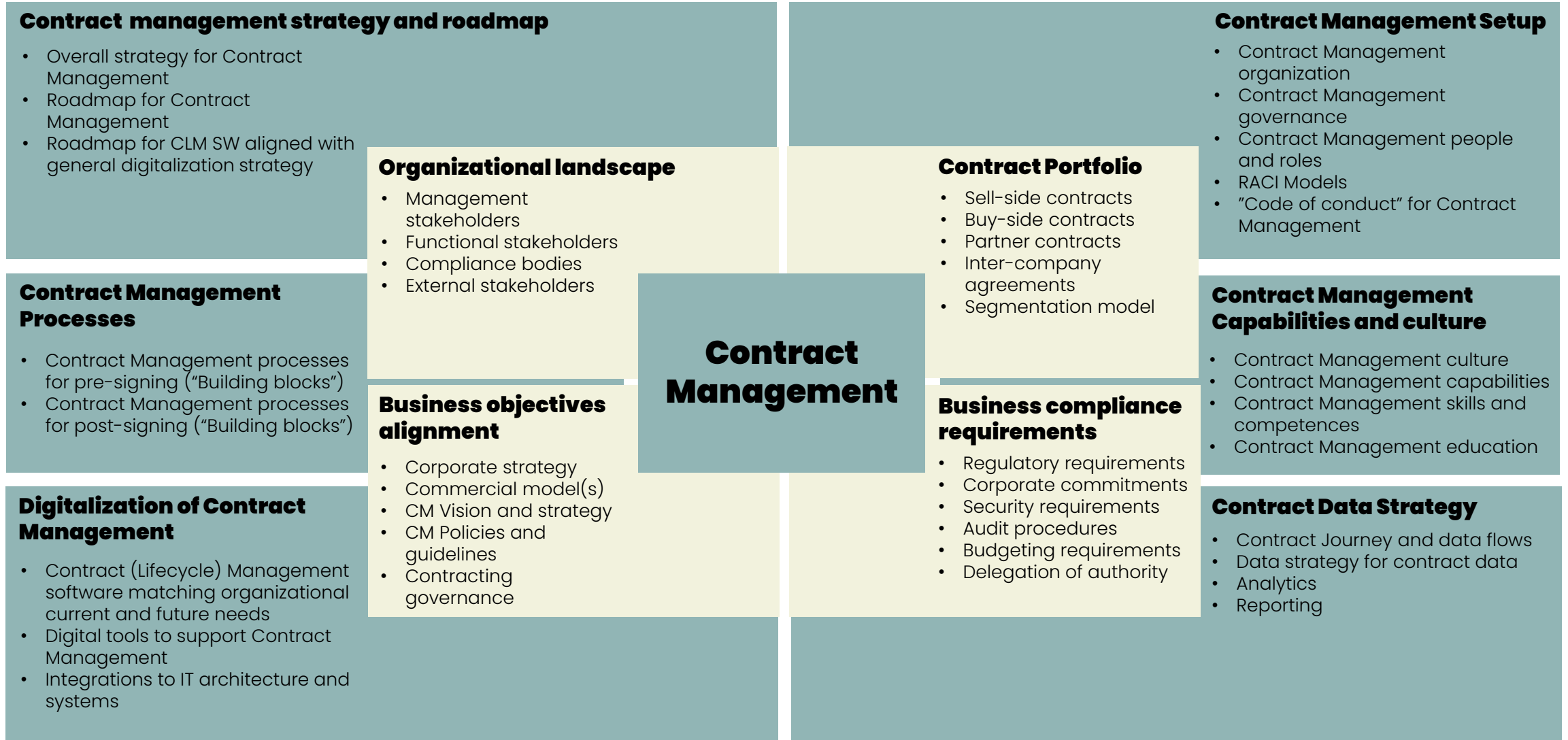
A business and management discipline supporting inter-organizational commercial collaboration



Setting the scene



Contract Management OM as a strategic business enabler



Legal and contract practitioners have a low regard for contracts

Only 39%

**believe that contracts
support successful
business outcomes**

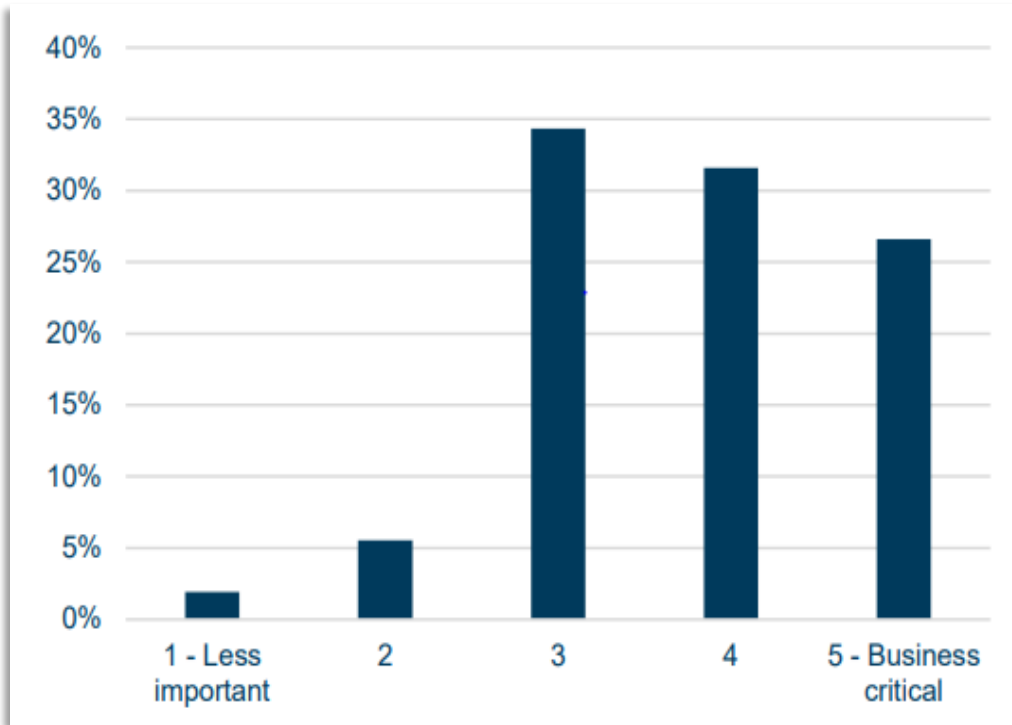
Only 16%

**believe that today's
negotiations focus on
the right topics**

CLM – in short



CLM Software is now more than ever considered a business-critical priority



”

Contract management technology has delivered greater speed and an ability to better manage the risks resulting from the pandemic – but the most significant benefits have been gained by those who have undertaken a holistic deployment within a consistent process.

- WCC, *Managing Contracts under Covid-19*

Desired benefits from implementing CLM Software – AND barriers to get there

Desired benefits

- Visibility into contracts and contract data
- Improving operational performance
- Reducing value erosion
- Being able to find and search contracts.

Barriers for deploying software

- Building consensus across stakeholders (68%)
- Budget (62%)
- Alignment with IT strategy (46%)
- Concern over data security(36%)

Objectives and benefits from digitizing Contract Management

If you want to sail a ship, do it with people that are prepared to distribute the organization's teaching and yearning for a boundless ocean

Increased compliance with security requirements

Figure 3 –
Reasons for investing in
contracting lifecycle

	Aerospace and defense	Banking, insurance and financial	Business services	Technology and software	Telecoms	Oil, gas and energy	Health and pharma	Public sector and government	Manufacturing and processing	Engineering and construction
Speed	67%	56%	88%	74%	57%	58%	70%	36%	60%	57%
Visibility / Control	58%	78%	63%	74%	71%	67%	80%	64%	90%	57%
Internal audit findings	33%	44%	25%	21%	14%	33%	20%	45%	50%	29%
Regulation demands	8%	22%	13%	11%	14%	8%	30%	36%	20%	7%
Cost savings	33%	22%	50%	26%	29%	75%	60%	45%	30%	36%
Poor customer feedback	17%	0%	25%	16%	29%	33%	20%	0%	20%	0%
Other	17%	22%	25%	5%	0%	8%	20%	27%	20%	0%

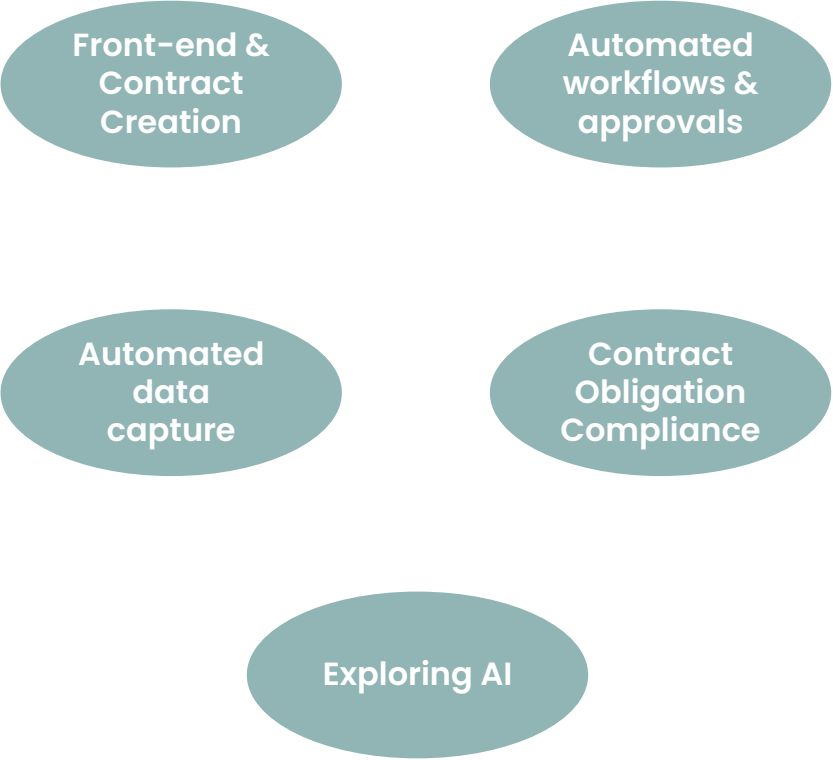
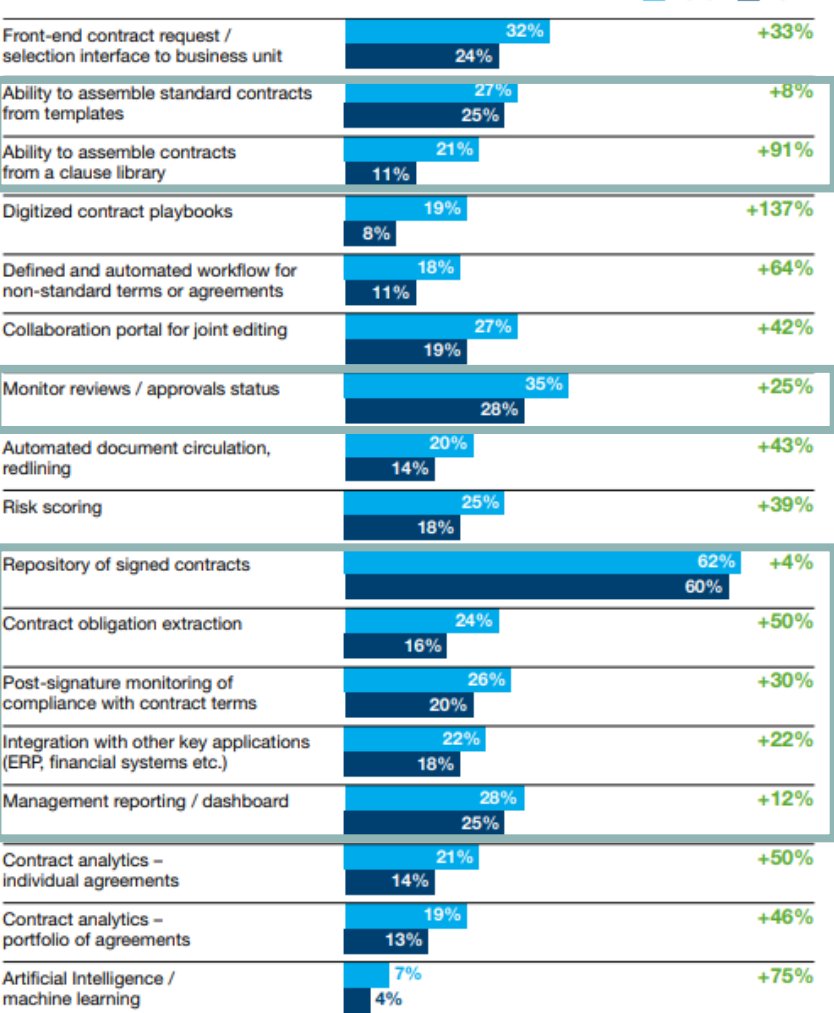


And much more...

Benefit Realisation Management is our preferred method

Trends in deployment of Contract Lifecycle Mgmt software

Figure 14a: Deployment of technology and tools by capability



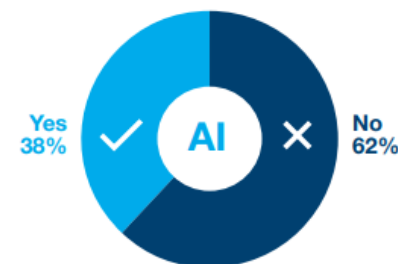
The role of AI in contracting today

The leap in Large Language Models capabilities and accessibility has significantly increased the user cases of AI in Contracting

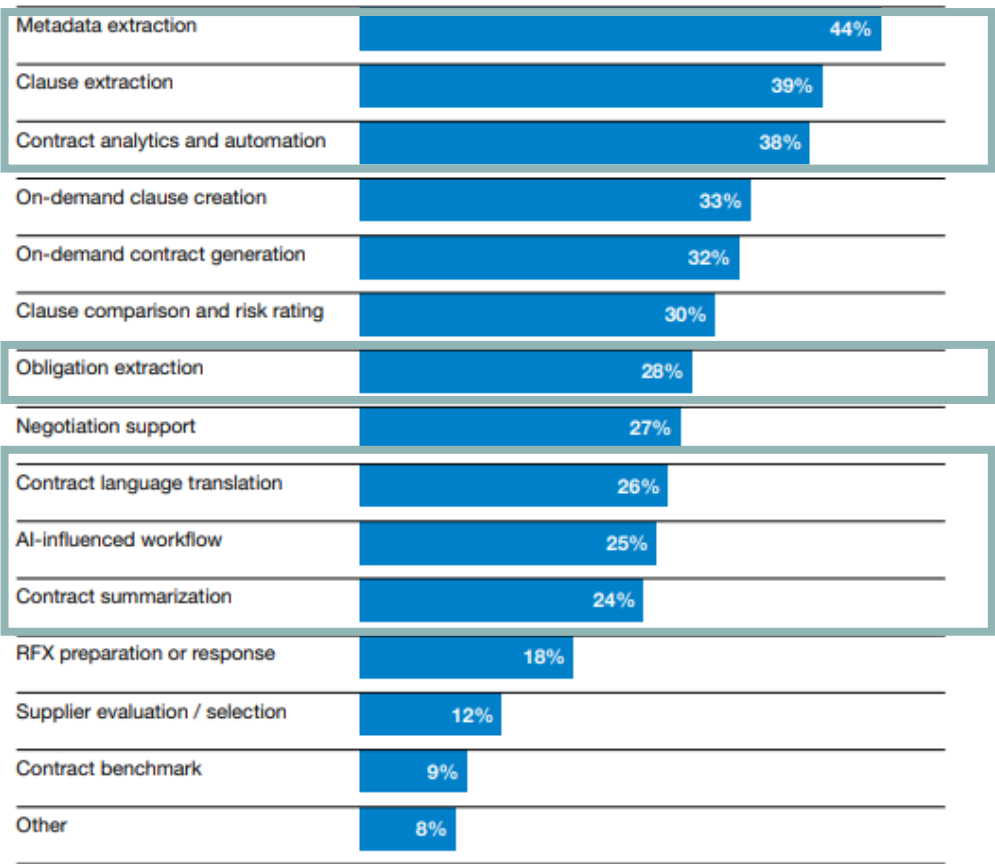
Implemented a CLM tool



Implemented AI tool (in addition to CLM)



Where has AI been (or is being) implemented?





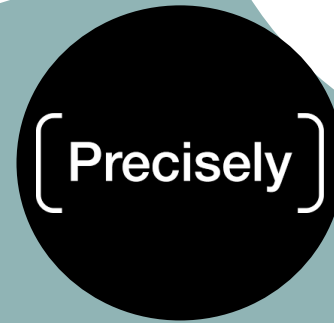
Solusi



ContractPodAi



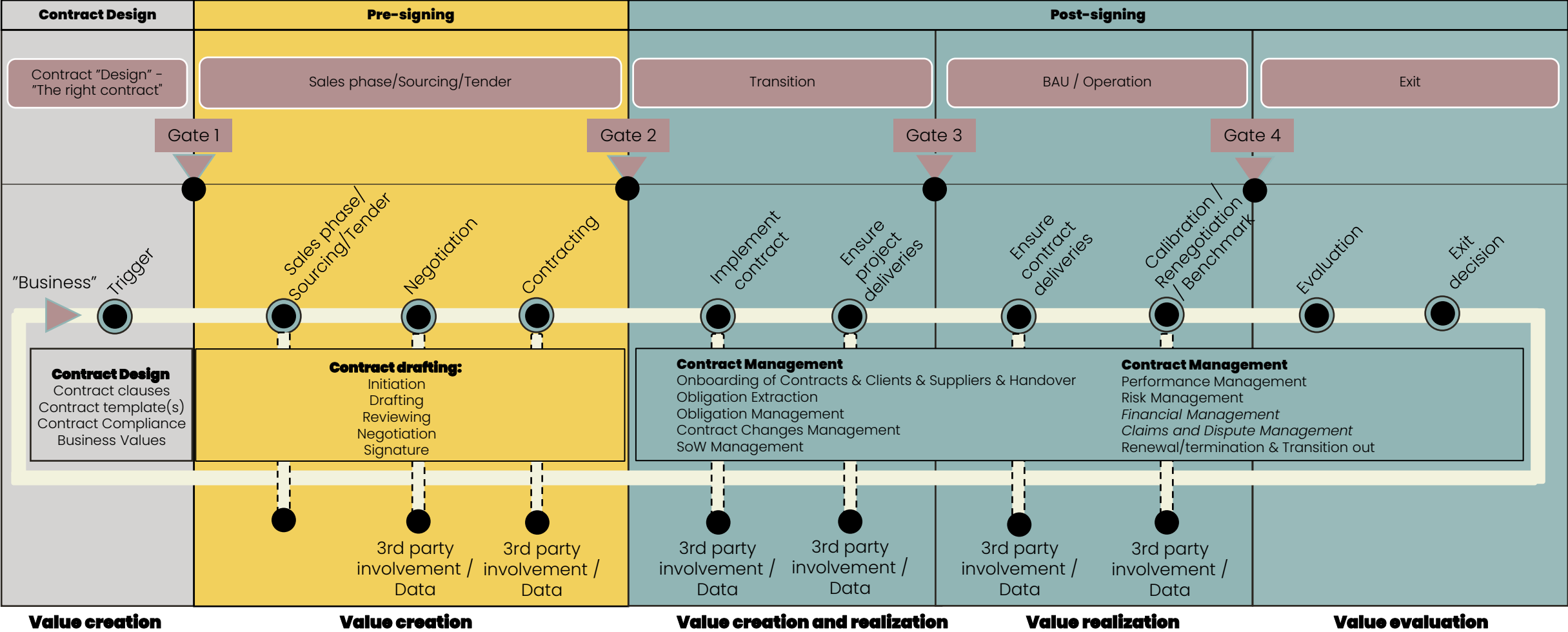
A hot CLM Software market



The Contract Lifecycle and the functionality to support

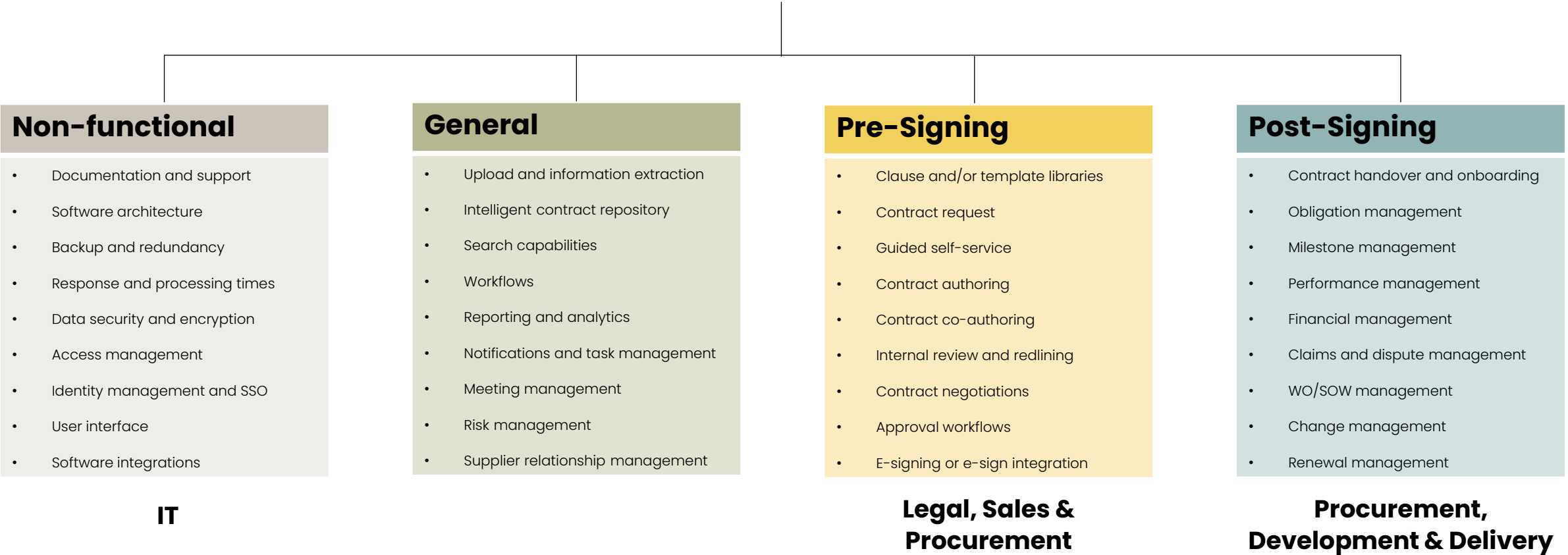


Processes in Contract Management



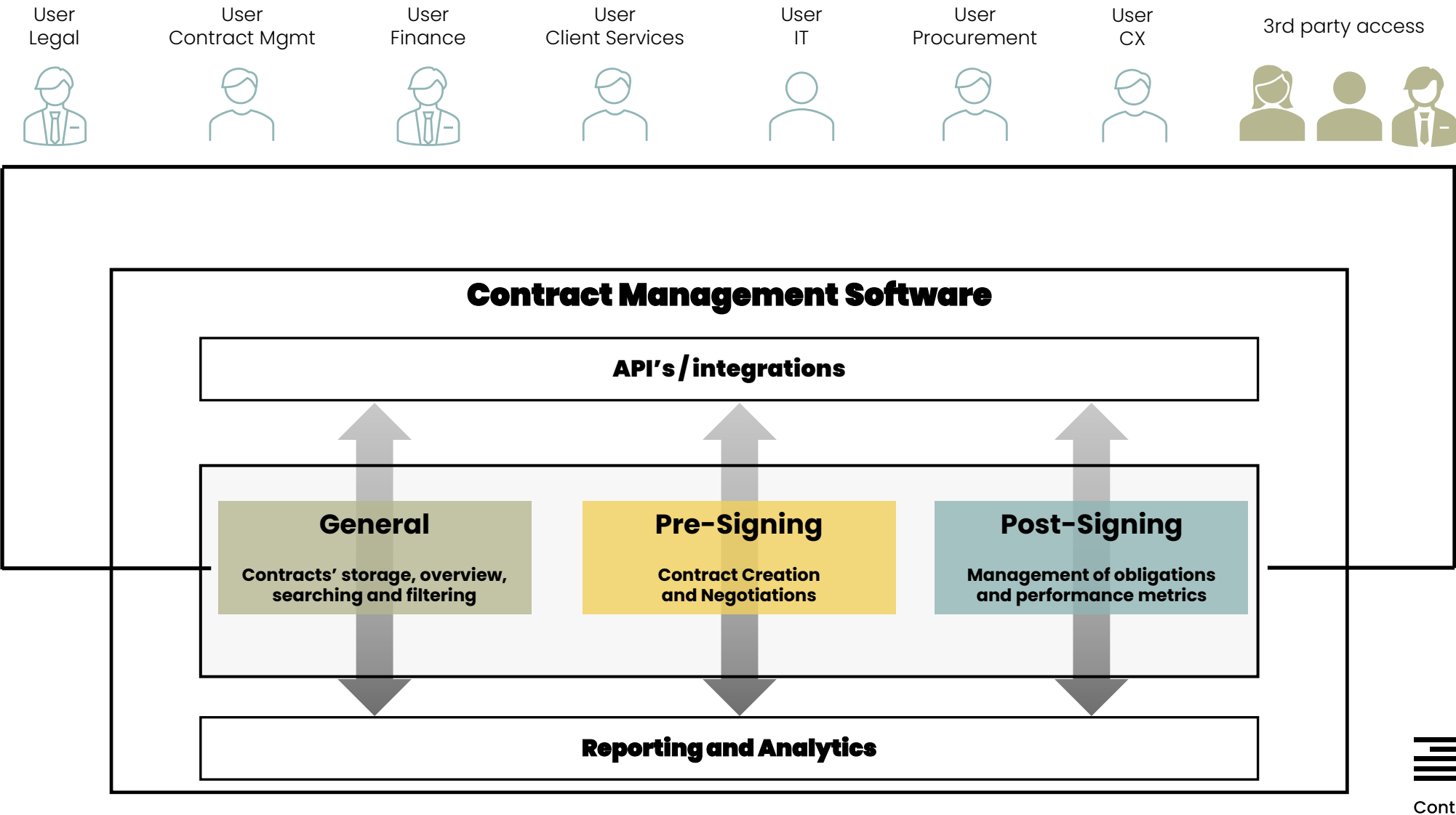
● = Data points with or without data and feedback loop where possible and relevant

CLM Software areas of functionality

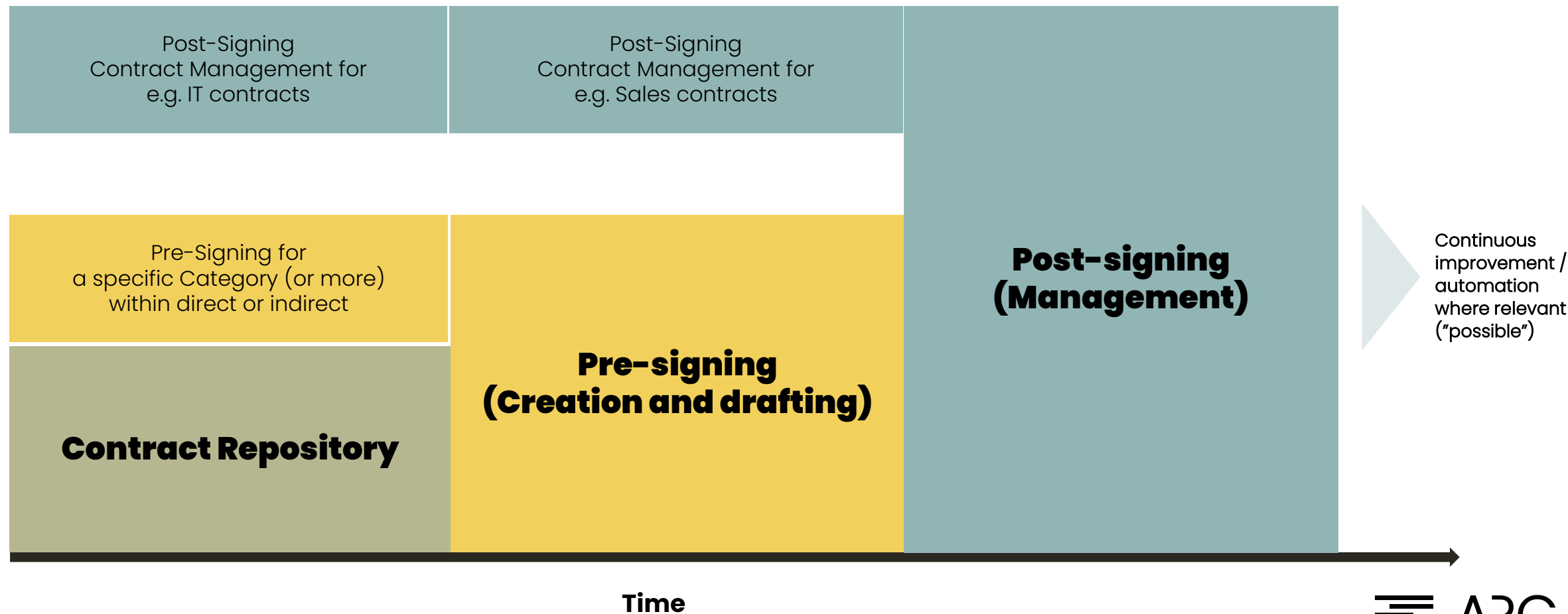


Some of the CLM Systems handle only a part of the contract processes so selecting the "right" CLM System requires deep and broad market intelligence and knowhow, as well as knowledge of business needs so you can engage and select the most suitable vendor(s).

Working with CLM Software



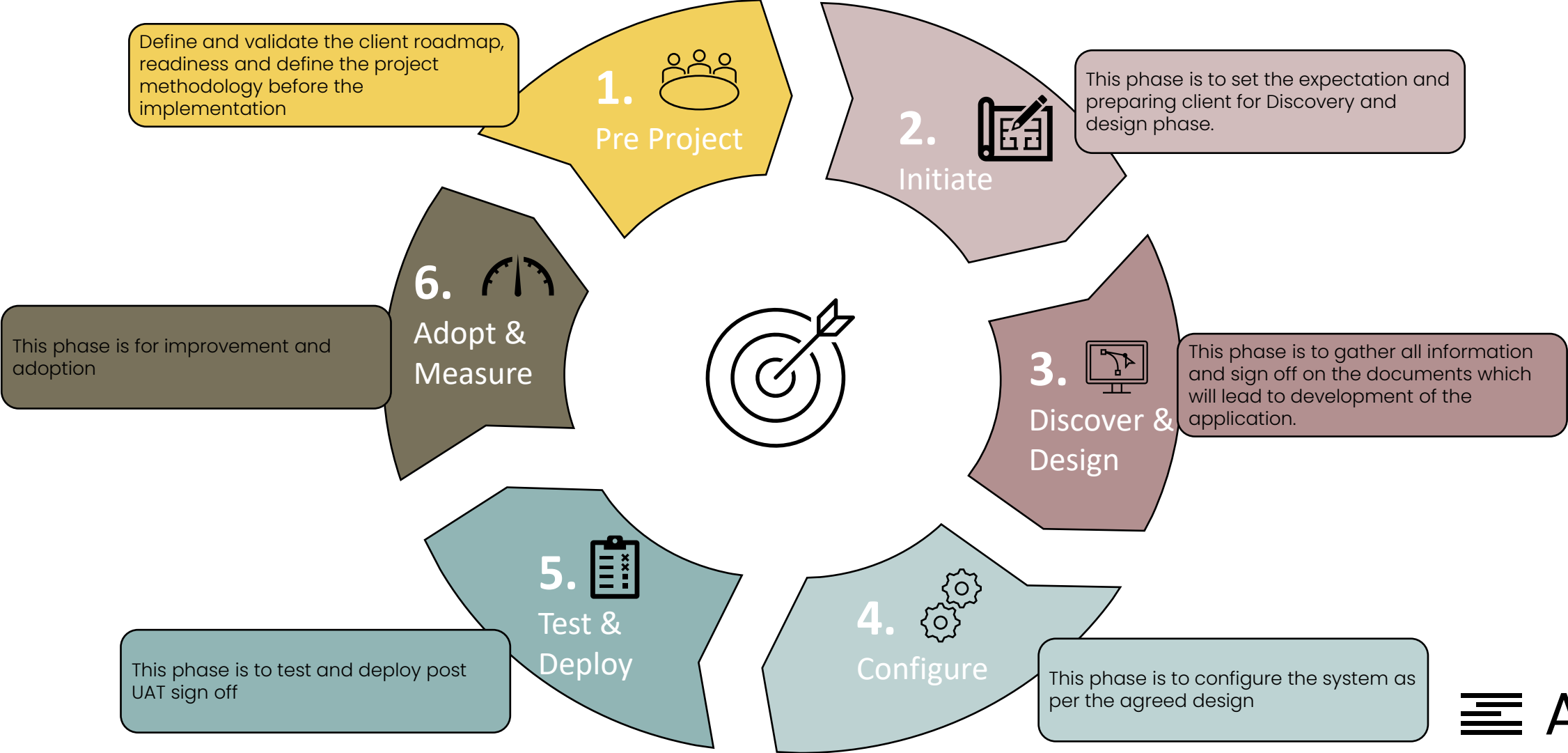
The importance of having a strategic approach to the CLM Journey/Roadmap



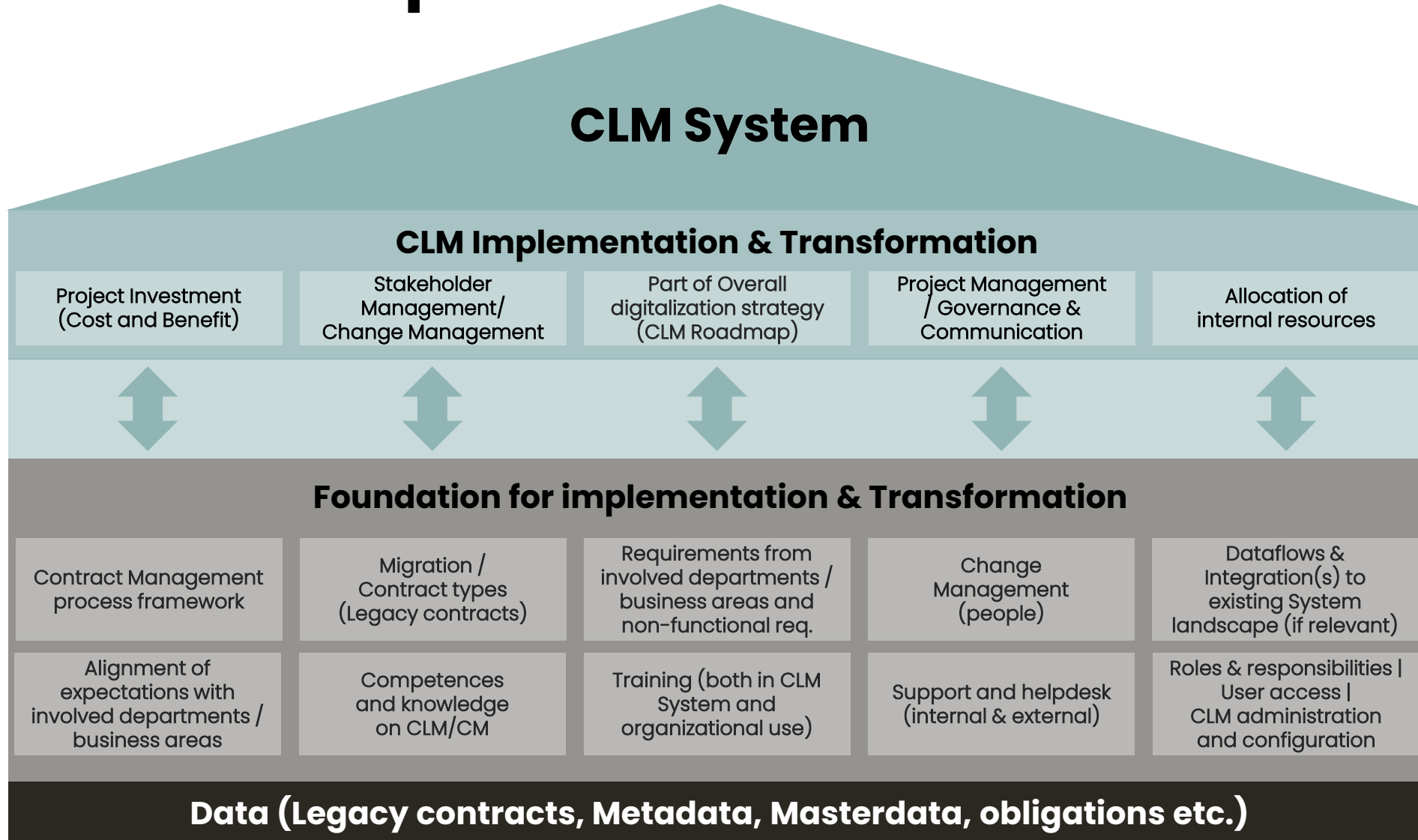
The fundamentals of a successful implementation



Implementation is also a process



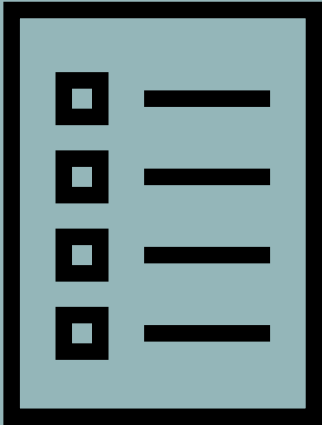
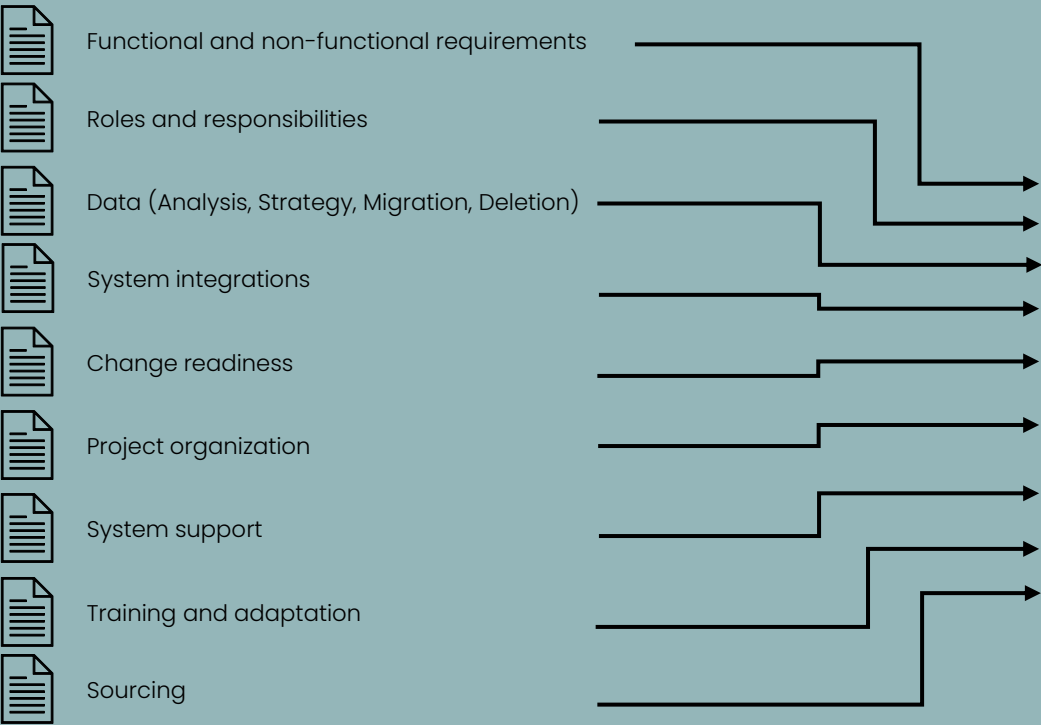
Critical elements of a successful CLM system implementation – based on our experience



Introduction to readiness assessment

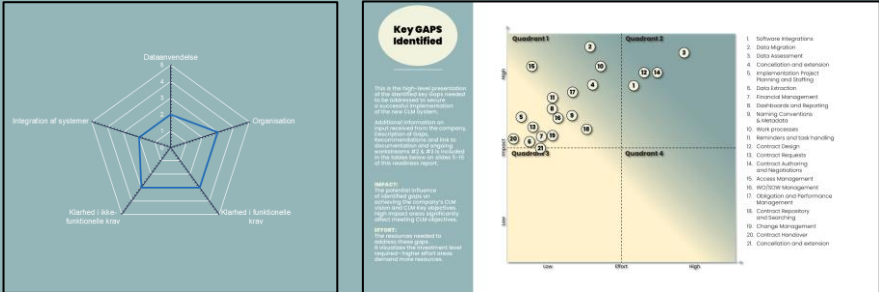
The purpose of the readiness assessment is to create an overview of critical areas for successful implementation and realization of the desired benefits, as well as recommendations for what should receive extra attention in the next phases of the project.

Analysis

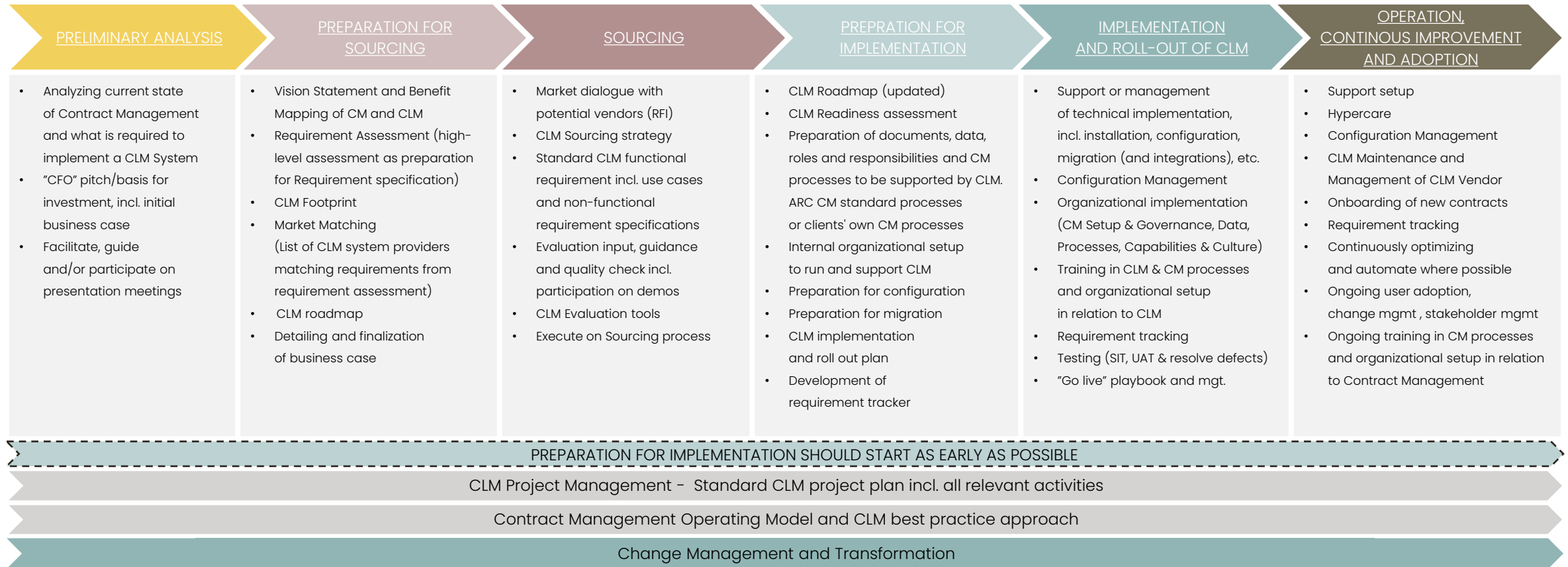


Readiness assessment

Mapping the as-is and to-be expectations to identify gaps and special points of attention during implementation.



The robust and value adding CLM selection & implementation process



If you remember nothing else – remember this

Dare to inspire

Objectives and benefits from digitizing Contract Management

If you want to build a ship, don't summon people to buy wood, prepare tools, distribute jobs, and organize the work; teach people the yearning for the wide, boundless ocean



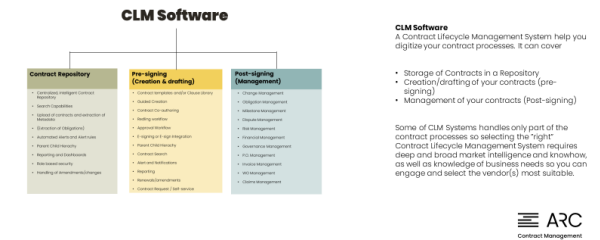
Be inspired yourself

Candidates for automation – WCC Benchmark

[illegible]

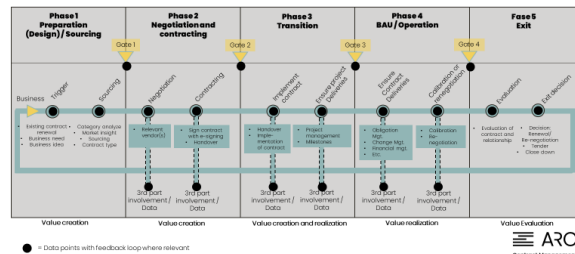
Know what you want

A very mature market offering with CLM Software suitable for all needs



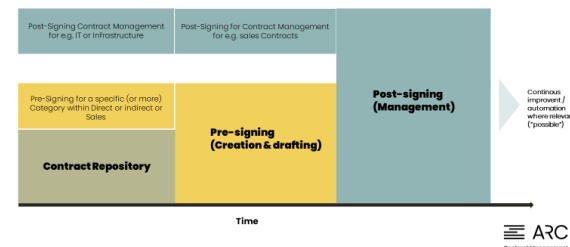
Map your contract journey

Know your overall Contract Journey, data points and value chain



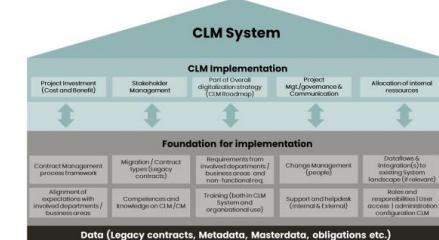
Think big, but start small

The importance of having a strategic approach to the CLM Journey/Roadmap



So much more than software

Critical elements of a successful CLM system implementation
- Based on our extensive experience



Practice to prepare

Group 1 – Select

Area of focus – Functional – General	Notes	Prio
1. Information Extraction Consider whether your organization will benefit from digitizing your legal documents (enabling search) and extracting relevant data points from your legacy contracts.		
2. Contract Repository Consider what kind of contract and document types your organization works with and whether you can locate all of them. How the employees should be able to interact (search, filter, sort, access) with contractual data and what would be their focus areas in the new CLM system (dashboards, widgets, landing page, etc.). Consider what data your organization would like to store in the new repository, whether this data already exists in a legacy system and if it was captured with high quality.		
3. Entity Management Consider what data on legal entities (internal and external) your organization tracks, is there a centralized master data mgmt solution to load it to the new CLM system.		
4. Workflows Consider if your organization has clearly defined and adopted processes with certain checks in place, how complex they are (sequential, parallel, conditional), are there any identified bottlenecks within the existing processes to be resolved, etc.		
5. Reporting and Analytics Consider what kind of reports your organization leverage wrt. contract management, how and when do you need to export them, does it track performance and cycle times.		
6. Notifications and Task Management, Meeting Management Consider what actions, tasks and workflow steps would require specific notifications (whether within the CLM system or through an e-mail integration) for your employees. Consider how your organization manages governance meetings and participants.		
7. Risk Management* Consider how and where does your organization tracks (contractual) risks and what risk data should be assessed, registered, managed and monitored within a CLM system.		
8. Supplier Relationship Management* Consider how and where does your organization manages relationships with suppliers and how the engagement on RFx processes and awarded agreements is evaluated. Consider your organization's approach towards collaboration with third parties.		
Note: areas marked with * are not commonly available across the CLM software market and may not be available across enterprise-grade solutions		



Please score your own organization's CLM Requirements by filling out the questionnaire

Group 2 – Implement



Area of focus	1	2	3	4	5
Process Maturity (1) No defined processes, all work done ad hoc based on individual experience → (5) Defined and documented processes adopted widely in the organization					
Rules & Responsibilities (1) No defined rules and responsibilities, all work carried out based on ad hoc agreements between individuals → (5) Defined, clear and documented rules and responsibilities adopted widely in the organization					
Contract Location (1) We don't know where our contracts are → (5) We know where all our contracts are and how to access them and all information about them					
Documentation Format (1) Contracts stored mostly in paper form → (3) All contracts stored in digital form within one or multiple repositories without any metadata tracked → (5) One central digitalized repository with all the organizations contracts and metadata					
Contract Access (1) We can only access contracts physically in the location they are stored → (5) Access management rules are implemented according to the company policy, the access is continuously reviewed and managed (e.g. granted for new users, revoked for dormant users, removed for users that left the company)					
Contract Metadata (1) No or very limited available digitalized contract metadata and no data model defined → (5) All mandatory metadata for all contracts available in one central digitalized repository and documented and adopted data model					
Contract Search (1) We are unable to perform any search as the contracts are not stored in one location and the metadata is not tracked → (5) We have contracts grouped into consistent folders and sub-folders and the ability to search by any mandatory metadata. We can also perform a full text search					
Client and Supplier Information (1) No information about our counterparties is tracked → (5) We store unified master data on our counterparties centrally and integrate it with any enterprise system using those. We have a documented process to introduce new clients and suppliers and continuously manage changes to our clients and suppliers' data					
Standard Clauses (1) No, every contract is created from scratch → (5) Our Business Users are provided with legal playbook that contains pre-approved clauses with fallback provisions to support potential negotiation					

Please score your own organization's CLM Readiness by filling out the questionnaire

Thank you for your time

Rasmus Tønnies

Partner

Tel. +45 5385 2434

rasmus.tonnies@arc-cm.co

Read more on www.arc-cm.co



NACCM

Nordic Association of Contract and Commercial Management

International vs Nordic Approach to CM

RAFAEL RODRIGUEZ
THE HALDEN WORKSHOP
11.10.2024

- ▶ **1.- Presentation and Introduction**
- ▶ **2.- The relevance of the culture in contract management**
- ▶ **3.-International approaches**
- ▶ **4.-Perception of the Scandinavian approach by a non-Scandinavian**
- ▶ **5.-Conclusion**

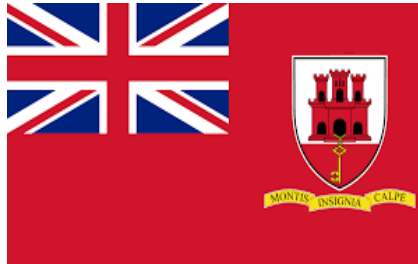
1.- Presentation and Introduction

- ▶ Chartered Msc. Civil Engineer
- ▶ Experience in large EPC infrastructure and renewable energy projects internationally.
- ▶ Since 2010 working as Contracts and Commercial manager, mostly managing standard forms of contracts.
- ▶ Fellow member of the Chartered Institute of Arbitrators



1.- Presentation and Introduction

► International approach?



► And it will be based on my personal perception working as CM for large EPC contractors internationally.

2.- The relevance of the culture in contract management

What is Culture ?

- ▶ We can hear about:
 - ▶ organisational culture;
 - ▶ generational culture;
 - ▶ regional culture;
 - ▶ and ethnic culture, etc,

This nevertheless does not provide a clear explanation of what is meant by culture. So what is culture?

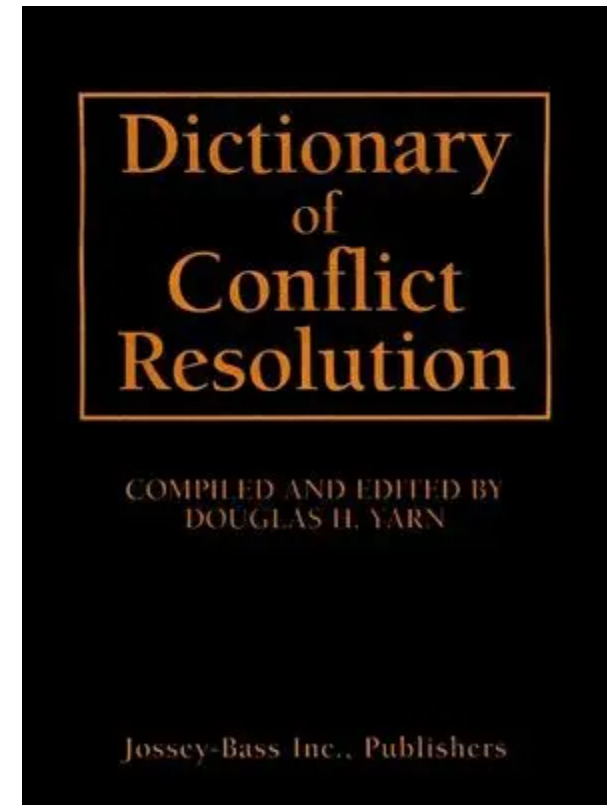
2.- The relevance of the culture in contract management

What is Culture?

- The Dictionary of Conflict Resolution offers a more comprehensive definition when it defines culture as:

*“ broad concept enveloping **knowledge, language, beliefs, art, morals, custom,** and other capacities and behaviours that one acquires as a member of a society.*

*Culture is **action**, such as the behaviour and products of society; culture is **knowledge underlying the action**, such as ontology innovation, and dissemination; culture is **language**, such as verbal instruction; and culture is the meaning attributed to knowledge and action, such as **taboos**.”*



2.- The relevance of the culture in contract management

Matters to note from the previous definition

- ▶ Culture is social and not individual.
- ▶ Culture is learned and not inherited.
- ▶ Culture is repetitive and not unique.

2.- The relevance of the culture in contract management

Working across borders requires understanding that your assumptions may not be the assumptions of others.



Culture and communication have a major impact on the perception of a conflict and its management.

2.- The relevance of the culture in contract management

► WHY a CM should be culturally aware?

1. We, CMs normally work internationally interacting with people from different cultures. We communicate when negotiating a contract, when discussing a claim, our way of communicating may have to be examined by third parties...
2. The approach to negotiation, mediation and other mechanisms for alternative dispute resolution are impacted by cultural differences.
3. Cultures are embedded in every conflict because conflicts arise in human relationships. Culture is always a factor in conflict/dispute, whether it plays a central role or influences it subtly and gently.

2.- The relevance of the culture in contract management

► WHY a CM should be culturally aware?

4. Different cultures have different norms about conflict/dispute management behaviour; thus, what is accepted in one culture may not be acceptable in another.
5. High-context and low-context communication - **Risk**
 1. This refers to the degree to which speakers rely on matters other than explicit speech to convey their messages.
 2. This is something to be aware of as a southern European working in Scandinavia and the other way around.

2.- The relevance of the culture in contract management

- ▶ **How should a CM become aware of the other party approach to CM?**
 - ▶ Be flexible and humble, you will always learn (**a lot!**) from the other culture.
 - ▶ Try to find out what the underlying values are of the culture you will be working with. **Be curious!**
 - ▶ Avoid jumping into negative conclusions when a cross-cultural situation makes you feel uncomfortable and irritated. **Weight the matters accordingly.**
 - ▶ **Adapt** contract terms and wording based on the culture of the other party, ensuring that the objectives in the contract and when there is a dispute are clear.



3.- International approaches to CM – EPC

- ▶ International Approaches (i)
 - ▶ Contrast between **high and low context** communication
 - ▶ Parties can bring feelings to the discussions, even in writing.
 - ▶ Who is right and who is **wrong** may matter a lot.
 - ▶ Importance of respect for **seniority** and **hierarchical** structures in business.
 - ▶ Less use of **Standard for of Contracts (SFCs)** – Ad-Hoc contract negotiated down to comas.
 - ▶ The contract may not be brought to the discussions, at list to the initial ones.
 - ▶ In case of differences, non-existent "**lowest possible level approach**".



3.- International approaches to CM – EPC

- ▶ International Approaches (ii)
 - ▶ Cultures prone to escalation of the matters.
 - ▶ Indirect style, emotional and intuitive. Heated discussions and interruptions or extreme interpretations.
 - ▶ Highly contentious and harsh approaches with the clients and subcontractors.
 - ▶ The contract is perceived as a tool to control money, and the contract manager is heavily business oriented.
 - ▶ Sometimes, the dispute must be kept “**alive**” for internal reasons – disinterest on settling - **Liability**

3.- International approaches to CM – EPC



- ▶ International Approaches (iii)
 - ▶ **Lot of words** for (sometimes) limited or **unclear** messages.
 - ▶ Preference for face-to-face negotiations and the role of informal discussions.
 - ▶ Contracts must be in the local language, extensive involvement and relevance of translators. **Understanding of industry!**
 - ▶ **Dress code** for the meetings.
 - ▶ ADR might be residual, tend to go to the courts or the opposite.
 - ▶ Between subcontractors and main contractors, continuously claiming is not wellreceived, claims at the end of the project are. - **RISK**

4.-Perception of the Scandinavian approach by a non-Scandinavian



- ▶ Scandinavia as a non-Scandinavian (i)
 - ▶ Right is right and wrong is wrong – **good faith**
 - ▶ No feelings or overreactions in the discussions – **Straightforward communication.**
 - ▶ Well organized - Extensive use of SFCs (**Plain language & ADR**)
 - ▶ Efficiency and more pragmatism during the project execution and negotiations
 - ▶ Enhanced risk awareness
 - ▶ Focus on collaboration and de-escalation (**contending and yielding**) which could be **misperceived** by other cultures as **weakness**.

4.-Perception of the Scandinavian approach by a non-Scandinavian



- ▶ Scandinavia as a non-Scandinavian (ii)
 - ▶ **Long term approach** - maintaining relationships is given additional weight.
 - ▶ Despite the above, disinterest of “**pleasing**” the other party.
 - ▶ Proficient **English skills**, no **translators** even if the contract is in a local language.
 - ▶ Information and strategies are shared within the team. **Openness**
 - ▶ Less relevance of the body language when discussing. **How did it go?**
 - ▶ Harder to know who is the **decision maker- Consensus**

5.-Conclusion

- ▶ Understanding and raising your awareness of the different approaches is a vital skill for a CM. It will:
 - ▶ minimize the risk of miscommunication.
 - ▶ help to anticipate the other's actions or reactions.
 - ▶ avoid bringing personal matters or emotions.
 - ▶ prevent or help to deescalate disputes.
 - ▶ help to build a more solid CM strategy by fine tuning it based on the approach of the other party.





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Q&A

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Thank you for your attention!

THE HALDEN WORKSHOP

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