

NRF Outsourcing Toolkit



The challenge

Over recent years, financial institutions have been increasingly interested in outsourcing business activities in order to reduce costs and improve efficiency. However, with increasing amounts of outsourcing comes greater risk, and regulators across the world are now scrutinising outsourcing arrangements more than ever before. Failure to meet their expectations could result in a regulatory investigation or sanction, causing unnecessary drag on your business.

The NRF Outsourcing Toolkit ensures that your firm is able to outsource in a way that complies with relevant regulatory requirements.

What outsourcing requirements need to be met?

What outsourcing requirements need to be met? There are now a broad range of requirements that are relevant to regulated firms, deriving from the Capital Requirements Directive, the Markets in Financial Instruments Directive and its implementing legislation, the FCA Handbook and PRA Rulebook and relevant regulatory guidance, most significantly the EBA revised Guidelines on outsourcing arrangements ('the Guidelines').

The Guidelines are relevant to both EU and UK firms, and require firms to identify their outsourcing arrangements, and ensure that they meet specific contractual requirements and broader regulatory expectations. Firms should be working towards making the required changes to their contracts now. For EU firms, this process needed to be completed by December 31, 2021. In the UK, both the FCA and the PRA expect firms to have to reviewed and updated legacy outsourcing agreements at the first appropriate contractual renewal or revision point in order to meet the regulators' expectations by March 31, 2022. Where arrangements of critical or important outsourcing arrangements were not finalised by March 31, 2022, the FCA expected to be notified.

How will the NRF Outsourcing Toolkit help you to meet these requirements?

We understand that reviewing and negotiating outsourcing contracts to meet the expectations set out in the Guidelines can be an expensive and onerous process for firms, and many do not have the resources to conduct this exercise internally.

The NRF Outsourcing Toolkit will help you to navigate this process, saving you significant time and resource. By subscribing to NRF Outsourcing Toolkit you will have access to a suite of documents, comprising:

- A guide to identifying outsourcing contracts that are likely to be in scope of the Guidelines;
- A memorandum setting out possible contract remediation options and strategies; and
- A checklist to ensure all regulatory provisions are satisfied in respect of each outsourced contract.

In addition to providing access to this suite of documents, we can also support your remediation work on either an ad hoc basis or by managing and running the uplift exercise overall.

We recognise that our clients will have different requirements when it comes to their outsourcing projects. We can therefore tailor our levels of support and pricing structures flexibly depending on what support you need, including fixed prices for agreed outputs to aid budgeting and provide cost certainty.

The NRF Outsourcing Toolkit: our approach

At NRF, new technologies and working methods are transforming the way this work is delivered. Bringing together the right mix of technologies and human expertise is essential, but the optimal combination varies depending on the scale and complexity of the project. Our approach is supported by a range of the best available technologies which we select after rigorous testing.

We see any remediation exercise as being broken down into the following key steps:

Step 1: Identifying the population of contracts that need to be reviewed and remediated

- We appreciate that some clients may have already identified the population of contracts that need to be remediated, and whether those contracts qualify as "material". Where this is not the case, clients may look for us to help them to identify the population of contracts that qualify as "outsourcing" arrangements in line with the Guidelines, and indeed may need further assistance to identify "material contracts".
- At the outset, we triage the documents, remove those which are not relevant or duplicative, and group them so that families of contracts and amendment agreements can be reviewed holistically. Based on institutional preferences or positions, a set of data points is agreed, to be extracted from all agreements.
- Once the population of contracts has been identified, these will be uploaded to a central repository. This central repository (usually HighQ or Microsoft based) includes a designed "workflow", which will take every document through the whole lifecycle of its review. This allows structured data to be attached to the relevant document, as well as allowing a consistent and efficient approach to be taken for each document, providing oversight and reporting to the project team and senior management. As the data is structured, it can be presented in easy to digest formats, with data profiled and presented in whichever way is useful to the client.

Step 2: Carrying out the review/remediation exercise

- Our team of highly experienced lawyers in London, supported by our parallel team in Newcastle, will carry out a detailed review of the contracts. Where possible, we will leverage machine learning tools to help aid and add efficiency to the review process. The extent to which the review can be carried out manually or using machine learning techniques will depend on the nature of the contractual provisions and the extent to which there is consistency across the contracts.
- At the outset it is important to determine what approach a client wants to take to the re-papering exercise. There are a number of approaches that could be taken: - some clients will seek to amend the underlying agreement and will require the counterparty to re-sign the amended agreement whilst others may choose to incorporate relevant provisions by way of a side-letter. We will work with you to identify which approach best suits your business.
- We can assist at all stages, from contractual review, through the document management and finally to negotiation and finalisation. We can also assist with the signature process.

Our experience

We have extensive experience on similar review and repapering exercises for a wide range of clients and have been engaged on some of the largest and most complex projects in recent years, including the following:

- As part of IBOR transition, we have reviewed, amended and negotiated complete loan and derivative portfolios for numerous global banks. The largest of these review projects included over 50,000 agreements. These projects are managed in an internally developed and configured, end-to-end technology "production line", including machine learning assisted document review and automated amendments. Staffed principally by the Newcastle legal process team, directed by NRF project managers liaising directly with in-house project managers and overseen by senior NRF lawyers in most global financial centres.
- A banking document review for a US headquartered global investment bank, completing a major asset sale including derivatives, asset finance and project finance loans. The review covered over 100,000 documents, and was staffed by c.30 paralegals, and c.20 associates (covering the range of contract types and jurisdictions – this does not reflect leverage). The project was completed on time and budget. This did not precede a repapering, but by using extensive automation, we were able to accelerate the portfolio sale closing mechanics across a wider range of instruments.
- Conducting a bulk review of over 2,000 lending and associated documents for a leading US investment bank. This project was supported by a team of around 20 associates in London, New York and other international offices, and around 40 reviewers in our Newcastle Hub.
- Combined with our experience of running smaller projects, we have now developed a modular solution that can draw from a menu of approaches to provide the right blend of legal tech and legal expertise to suit the size and complexity of your project.
- We offer the deep legal expertise of a global law firm, the flexible and scalable delivery capability of a process outsourcer (through our Hub in Newcastle) and the tooling options of a technology consultancy, all within a single institution. By working together on client projects, we have developed cross functional knowledge and experience that allows our teams to interact seamlessly in delivering legal services to our clients. With our large international network, we can do this in many languages. With our rigorous approach to data, we can provide you with valuable analytics and insights throughout.
- In completing a review and amendment round of this kind, in an up to date way, you will have a huge store of digitised documentary data. Too often, this is discarded at the end of the process, with a reversion to analogue storage and documentary processes. When set up correctly, for very little extra effort, these gains can be captured for future use, either in future review and amendment scenarios, or for ongoing insight.

Accolades and Awards

Most Innovative Use of Technology

The Lawyer Awards - NT Analyzer

Innovation of the Year (International Law Firm)

Global Legal Awards, Legal Week – Claim Control, flight delay claims

Standout Response to Covid

FT Legal Awards - Covid Resolve

FT Innovative Lawyers Report

NRF Transform programme, IBOR Transition, Business & Legal Operations graduate scheme

'Global outsourcing capability with years of experience handling BPO and ITO projects of all kinds. Best known for advising financial services companies. Particularly capable with regard to new technology, with notable expertise in relation to AI and automation.'

Chambers & Partners UK, 2021 - Outsourcing

'A client describes the team as "professional, engaged and quick to turn things around".'

Chambers & Partners UK, 2021 - Financial services non-contentious regulatory

Norton Rose Fulbright has extensive experience reviewing and repapering contracts for a wide range of clients and has been engaged on some of the largest and most complex projects in recent years.

For more information or support, please contact us.

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NRF *Transform*

NRF Transform is our global change and innovation programme. It aims to make how we deliver traditional services more effective and efficient, and to provide entirely new solutions to our client's most pressing business problems. It has over 150 staff in offices around the world, as well as 3 dedicated Hubs, and includes teams focusing on Applied Technology, Innovation, Legal Design, Legal Project Management, Legal Operations Consulting, Resource Management, and Commercial Management.

nrfttransform.law

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