

# Improving Legal Department Processes

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Legal IQ Study

*Preview Report*

Legal departments believe in a relationship-based model of business support that is unsustainable in today's business environment.

- Legal's model of customized interactions was designed for a world in which decision making was concentrated in small groups (typically executives).

# AN UNSUSTAINABLE SERVICE MODEL

## Legal Believes Strongly in Direct Interaction

Key General Counsel Perceptions

**97%** believe direct interactions with clients effectively improve legal risk management.

**94%** believe attending business unit meetings effectively improves risk management.

**63%** believe legal risk escalation criteria, templates, or policies (indirect involvement) effectively improve risk management.

n = 96-97.  
Source: CEB analysis.

## Legal's Direct Interaction Strategy Doesn't Scale

Approximate Ratio of In-House Lawyers to Client Groups

 10 Clients

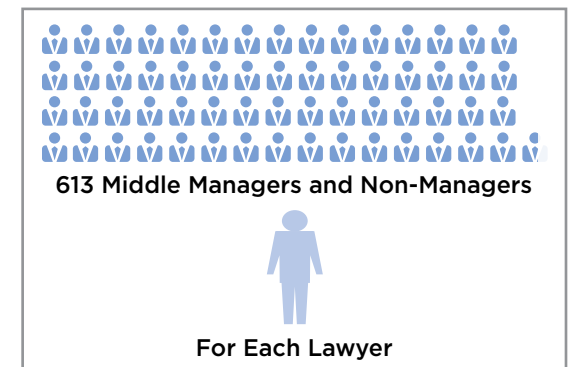
### Executives

$$\frac{\text{Median Number of Executives}}{\text{Median Number of Lawyers}} = \frac{200}{19}$$



### Middle Managers

$$\frac{\text{Median Number of Middle Managers and Non-Managers}}{\text{Median Number of Lawyers}} = \frac{11,636}{19}$$



In addition to lacking scale, Legal's current support model fails to meet clients' demand for swift issue resolution.

- Business clients, particularly middle managers, will continue to eschew legal guidance unless the experience is seamlessly integrated into operations or made simple and easy to navigate.

To better scale guidance across the business and reduce the need for customized interactions, Legal should embed guidance in workflows and at decision points.



"Our clients don't want to come to Legal with every question, and they shouldn't have to. They want to resolve issues themselves and get on with their work."

General Counsel and Corporate Secretary  
Pharmaceuticals

# CLIENTS WANT RESOLUTION, NOT INTERACTION

## Legal's Service Doesn't Meet Client Needs

*Failures of Legal's Service Model*



### Leaves Clients in Doubt

Only 40% of employees agree that they have access to the necessary legal information to make appropriate business decisions.



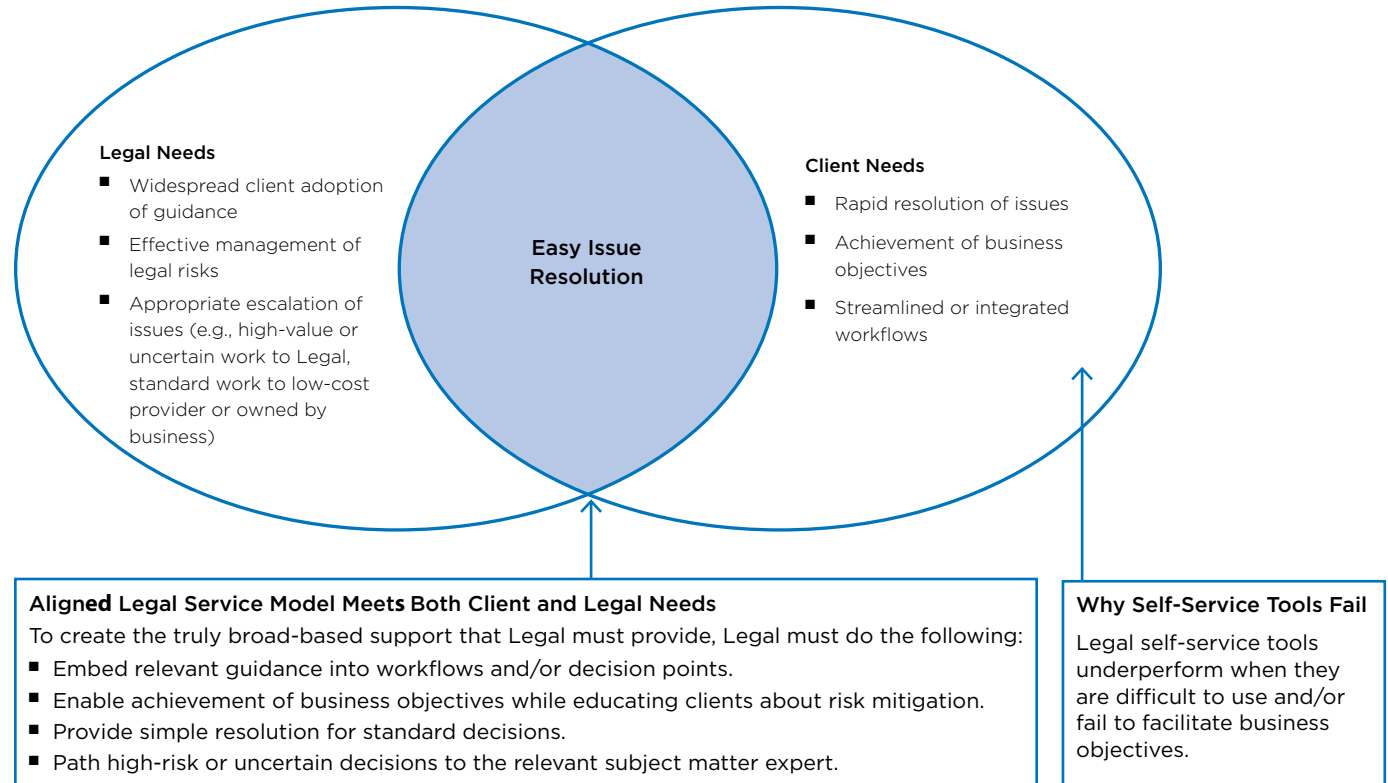
### Requires Additional Client Effort

Only 29% of employees agree that the legal department makes it easy to resolve issues without contacting a legal department representative.

Source: CEB 2014 Corporate Legal Decision-Making Survey.

## A Better Service Model

*Improved Self-Service at the Intersection of Legal and Client Needs*



Source: CEB 2014 Legal Budget Diagnostic.

Legal departments should identify opportunities to embed guidance into existing business processes and decision flows.

- By including legal guidance in operational procedures, clients more readily accept the guidance and view it as a standard component of operating procedures.

# MOVING BEYOND CONTRACTS

## Opportunities to Embed Legal Guidance in Employee Workflows

Embedding Mechanism	Suitable Business Processes	Action Items
<b>Standardized Templates and Checklists</b>	<ul style="list-style-type: none"> <li>Marketing</li> <li>Label Review</li> <li>Trademark Clearance</li> <li>Severance Letters</li> <li>Contract Review</li> <li>External Communication</li> <li>Data Transfers</li> <li>NDA's</li> <li>IP Licenses</li> <li>Regulatory Filings</li> </ul>	<ul style="list-style-type: none"> <li>Require use of templates as a starting point for all appropriate activities.</li> <li>Translate legal concepts and risk tolerances into activity- or operations-based questions clients can easily answer.</li> <li>Make templates and checklists available in a central location on company intranet.</li> </ul>
<b>Legal Process Filters</b>	<ul style="list-style-type: none"> <li>Contract Review</li> <li>Third-Party Selection</li> <li>Franchising</li> <li>New Business/Product Launched</li> <li>New Market Entry</li> <li>Mergers/Acquisitions/Joint Ventures</li> <li>Marketing Campaigns</li> <li>Patent Filing</li> <li>Real Estate/Leasing</li> <li>Trademark Clearance</li> </ul>	<ul style="list-style-type: none"> <li>Use risk assessment results and business partner feedback to identify critical junctures in activity or process flows where legal guidance would be most influential.</li> <li>Provide clear, practical guidance directly related to the task clients are completing (e.g., vendor assessment).</li> <li>Include branching questions to path clients to Legal or a relevant subject matter expert if certain risks are identified.</li> </ul>
<b>Real-Time Training</b>	<ul style="list-style-type: none"> <li>International Travel (Anticorruption Risk)</li> <li>Attendance at Association Meetings (Antitrust Risk)</li> <li>Promotion to People Manager (Handling and Escalating Employee Issues)</li> </ul>	<ul style="list-style-type: none"> <li>Partner with information owners (e.g., HR, Finance, Learning and Development) to embed risk criteria in databases.</li> <li>Use analytics to flag risk events (e.g., role changes, travel, expense reports) and trigger relevant legal and compliance training.</li> </ul>
<b>Automated Screens and Reviews</b>	<ul style="list-style-type: none"> <li>Data Transfer</li> <li>Outgoing Communication</li> <li>Termination/Severance</li> <li>Contract Review</li> <li>Trade Compliance</li> <li>Third-Party Management</li> <li>Whistleblower Holds</li> </ul>	<ul style="list-style-type: none"> <li>Automate screens to flag high-risk transactions (e.g., a pop-up confirming that a client is sending an unencrypted file).</li> <li>Send an alert to the privacy manager whenever a flagged file is sent out.</li> </ul>
<b>Compliance by Design</b>	<ul style="list-style-type: none"> <li>Data Privacy</li> <li>Trade Compliance</li> <li>Records Management</li> </ul>	<ul style="list-style-type: none"> <li>Identify common legal and compliance risks in employee workflows.</li> <li>Structure systems and processes to default to legally sound outcome (e.g., set e-mail systems to delete all files after the appropriate retention period).</li> </ul>

Source: CEB analysis.

# CASE STUDY EXCERPT: CODIFIED PROJECT GUIDANCE

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## OVERVIEW

Intuit adopts a “getting to yes” mind-set to support accelerated product innovation by the business. Legal uses self-service tools grouped by common project characteristics and legal risks to highlight the legal implications of project decisions and enable faster development cycles.

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## SOLUTION HIGHLIGHTS

### **Finding Common Legal Issues in Disparate Project Types** *(previewed in this excerpt)*

To develop standing legal guidance for projects, Intuit identifies common patterns based on past product development projects.

### **Setting Legal Guardrails for Disparate Projects** *(previewed in this excerpt)*

Intuit establishes project-based risk thresholds to help the business quickly identify when it needs to involve Legal, when it can proceed with project experimentation, and how best to stay within legal guardrails.

### **Removing Barriers to Innovation**

Intuit uses self-service tools to specifically target the barriers (e.g., legal uncertainty, responsiveness, lack of prescriptive guidance) that typically prevent product teams from moving at their desired speed.

### **Creating Self-Service “Products”**

To drive use and efficacy of self-service tools, Intuit’s legal department treats self-service tools as “products” that need continuous experimentation and improvement driven by customer feedback.

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## COMPANY SNAPSHOT

### **Intuit, Inc.**

Industry: Software  
2013 Revenue: US\$4.17 Billion  
2013 Employees: 8,000

Intuit, Inc., develops software used to manage personal finances, small business accounting, and consumer tax preparation in addition to software offerings for accounting and management applications for construction, health care, and retail organizations; payroll services; financial supplies and software for professional tax preparation; and products and services for financial institutions.




Intuit's business pursues a rapid product development cycle requiring Legal to accelerate advice by streamlining the business's use of its self-service tools.

# FROM LEGAL ISSUES TO BUSINESS PROCESSES

Changing the Legal-Client Interface  
*From Legal to Business Focus: Orientation of Self-Service Tools*



## Tools Based on Legal Risks

-  Intellectual Property Toolkit
-  Data Privacy Policy
-  Contracts Checklist

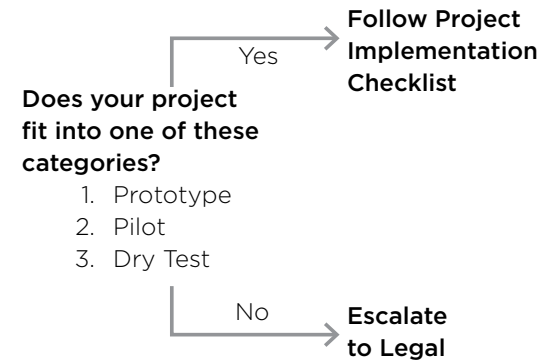
- ✗ Requires clients to spot issues
- ✗ Does not cover all areas of uncertainty

### Result

Clients escalate issues to Legal or avoid consideration completely.

Source: Intuit, Inc.; CEB analysis.

## Tools Based on Business Processes



- ✓ Limits client uncertainty around where and how to apply guidance
- ✓ Clear escalation path to Legal




### Result

Clients complete projects faster and unnecessary Legal requests decrease.

## Intuit's "Getting to Yes" Mind-Set

To strike a better balance between the risk and reward of business activities, Legal has shifted its mind-set from the identification of all possible risks associated with a project to a "getting to yes" mind-set in which Legal helps the business achieve its objectives while reducing risk exposure.


## Elements of Business Project Guidance

 <p><b>Categorization of Business Projects</b></p> <p>Legal identifies commonalities among seemingly disparate business projects to standardize project type and treatment.</p>	 <p><b>Risk Thresholds for Legal Involvement</b></p> <p>The legal department sets project parameters that define acceptable risks and the need for legal involvement.</p>	 <p><b>Simple, Usable Guidance</b></p> <p>Intuit organizes and simplifies legal guidance by project need to enable quick and accurate application by the business without unnecessary clarifications from Legal.</p>
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Source: Intuit, Inc.; CEB analysis.

Legal maps business activities to four key risks and determines an appropriate risk tolerance for each risk.

- Legal assesses three key questions:
  - What is the business trying to accomplish?
  - What are the risks associated with these desired results?
  - In which business activities are these risks present?

 “Part of the value-add that you bring is the capability to strike that balance between risk and benefit based on the type of business your company is in and the risk tolerance of the company.”

Joe Hernandez  
 Director, Deputy General Counsel  
 Intuit

# ESTABLISHING RISK THRESHOLDS



Major Legal Risks and Associated Business Activities  
*Illustrative*

**To understand potential legal risk exposure and better prioritize focus across all business projects, Legal:**

- Analyzes business strategy,
- Determines which initiatives or projects the business will undertake to meet these goals, and
- Conducts an informal risk assessment to understand the potential exposures resulting from these business activities.



	Data Privacy	Regulatory Risk	Consumer Risk	Intellectual Property Risk	Outcomes
Risk Level 1	Collecting customer demographic information	Collecting customer feedback on test product	Testers are not compensated.	On-market products are tested.	Create standing guidance to enable completion of project without legal review.
Risk Level 2	Collecting data of EU citizens or residents	Charging a participant US consumer tax	Testers are given a small token as compensation.	Proprietary products not yet publicly available but protected by patent or trademark are tested.	Create standing guidance with embedded triggers for legal review.
Risk Level 3	Collecting customer credit card information	Use of government agencies or employees as testers	Testers are given something of more than \$50 value as compensation.	Proprietary products not yet patented or trademarked are tested.	Path client directly to the legal department.

**Aligning on Risk Appetite**

To ensure streamlining of legal involvement in business projects did not come at the expense of increased risk exposure, Legal held a meeting to discuss risk appetite and establish appropriate escalation thresholds for each key risk area.

## CASE STUDY EXCERPT: LEGAL RISK NUDGES

### OVERVIEW

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To better manage the legal risk stemming from a decentralized and increasingly complex decision-making environment, Kiewit created a risk assessment and mitigation tool for use by project managers. Legal embeds detailed, practical guidance to limit the opportunity for user error or inaccuracy, steering the business toward a more accurate risk assessment and targeted mitigation plan.

### SOLUTION HIGHLIGHTS

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#### **Embed Operational Guardrails at Key Decision Points** *(previewed in this excerpt)*

Integrate legal guidance into decision points to seamlessly embed legal influence, creating a feedback loop between Legal and the business without requiring a separate interaction.

#### **Improve Business Understanding of Legal Risk** *(previewed in this excerpt)*

Provide business clients with practical information about identified and anticipated risks at key phases of projects to facilitate a better understanding of which activities drive legal risk and how these risks can best be addressed.

#### **Review and Update Decision Guidance**

Create tools that generate a two-way flow of information between Legal and business clients, providing Legal with valuable input as to how tool accuracy and utility can be improved.

### COMPANY SNAPSHOT

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#### **Kiewit Corporation**

Industry: Construction,  
Engineering, and  
Mining Services

2013 Revenue: US\$11.8 Billion

Employees: 33,000

Kiewit Corporation is an employee-owned Fortune 500 contractor based in Omaha, NE. Kiewit's general contracting business is one of the largest in the world, with transportation projects accounting for a majority of its sales. Kiewit also serves the oil and gas, electrical, power, and waterworks industries.



To promote better decision making in an increasingly complex environment, Kiewit embeds legal decision prompts in a project-level risk assessment and mitigation tool.

- Lacking detailed guidance on how to define and assess risks, business clients often took a “check the box” approach to risk assessment and mitigation.
- Legal revamped its project-level risk assessment and mitigation tool to include practical guidance and decision guardrails to steer business clients toward improved risk management.
- By embedding guidance directly into the tool, Legal creates a vehicle for scalable influence.

# EMBEDDING LEGAL NUDGES IN TOOLS



## Traditional Approach to Project Risk Assessments

**Project Risk Assessment and Mitigation**

Risk 1: Antitrust

How does this risk apply to the project?

\_\_\_\_\_

\_\_\_\_\_

Likelihood (1-5): \_\_\_\_\_

Impact (1-3): \_\_\_\_\_

**Failures of the Traditional Approach**

- ✗ Broad, high-level questions are difficult for business clients to answer accurately.
- ✗ As a result, Legal receives poor-quality information on project-level risk exposure.

Source: Kiewit Corporation; CEB analysis.

## Kiewit’s Embedded Nudges Approach

**Project Risk Assessment and Mitigation**

Risk 1: Antitrust

*Do you have an exclusive subcontractor on this project?*

**When rating likelihood, follow these guidelines:**

**Rate 1:** If the chance of occurrence is well below average for that of similar locations

**Success of the Kiewit Approach**

- ✓ Detailed, practical guidance reduces business client burden for completing the risk assessments.
- ✓ Legal receives high-quality project risk understanding that enables improved risk mitigation.


Source: Kiewit Corporation; CEB analysis.

## Key Features of Kiewit’s Project-Level Risk Assessment and Mitigation Tool



**Framing Business Decisions**

Legal reviews project details and proposes contracts to identify potential areas of risk and assist the business in deciding whether and how these risks can be managed.



**Embedded Legal Guidance**

Legal embeds guidance on risks into project tools, ensuring better risk management and improving clients’ understanding of how legal risks manifest at the project level.



**Continuous Improvement**

Legal uses risk assessment results, internal trends (e.g., audit findings), and external factors (e.g., regulatory enforcement) to continuously refine the risks and mitigation activities included in the tool.

Kiewit's legal department frames risks for business clients during the bid phase of each project.

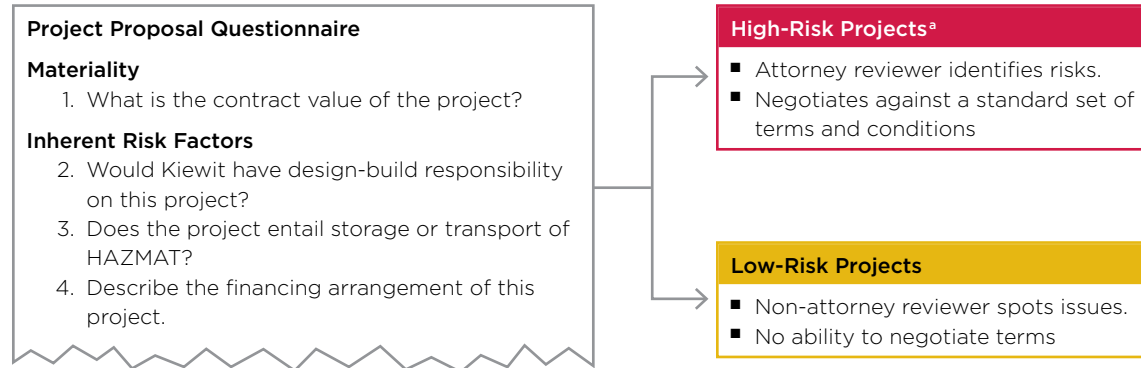
- Before bidding on a project, project operations managers must submit a questionnaire providing Legal with important project information.
- High-risk projects are reviewed by attorneys and low-risk projects are reviewed by operations staff who have completed requisite legal training.
- Legal can include any risks identified at this stage in the project-level risk assessment and mitigation tool to ensure further evaluation and mitigation.

# LEGAL ADDS VALUE BY FRAMING DECISIONS



## Kiewit's Legal Review Process

*Illustrative*



Source: Kiewit Corporation; CEB analysis.

<sup>a</sup> High-risk projects are categorized by the dollar value of the project, as well as heightened risk factors such as unique environmental/HAZMAT considerations, tunneling or significant subsurface work, work on a revenue-generating facility or operation, design-build projects, opportunities outside the United States or Canada, and contracts involving any financing by Kiewit.

## Kiewit's Opportunity Risk Assessment Form

*Illustrative*

Topic	Risk Profile Factor	Discussion of the Relevant Term, Condition, and/or Other Identified Factors	Proposed Change, Resolution, or Risk Mitigation
Indemnity	A reciprocal indemnification clause by client is preferred.	See Kiewit's standard <i>Terms and Conditions</i> with respect to indemnity.	Addition of reciprocal indemnification clause
HAZMAT	Where possible, the client should indemnify Kiewit for any liability arising out of handling or disposing preexisting HAZMAT.	Kiewit employees will be handling and disposing preexisting HAZMAT.	Raise bid by \$10,000 to cover an embedded EH&S officer.
Financial Resources of Client	Client must provide evidence of project financing on request.	Client is unwilling to include this clause in contract.	Kiewit <b>should not</b> bid on this project.

Source: Kiewit Corporation; CEB analysis.

### Driving Better Outcomes

By providing business clients with practical strategies for addressing identified risks, Legal guides business clients toward better risk management.

## KEY TAKEAWAYS: MAKE ISSUE RESOLUTION EASY

**Codify Legal Guidance** (*previewed in this excerpt*)—Improve the scale of legal influence by establishing clear, concise decision rules detailing when business clients should escalate issues to Legal and how projects can proceed without legal involvement.

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**Integrate Decision Nudges into Employee Workflows** (*previewed in this excerpt*)—Ensure minimal effort is required for employees to make the right decision by embedding practical guidance and decision guardrails directly into common business activities and processes.

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**Provide Relevant Support When Employees Need It Most**—Support employee application of legal guidance by providing easy access to reinforcement materials at critical decision-making junctures.

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**Establish Clear Escalation Paths**—Path decisions to members of the legal department who can best evaluate potential risk and the likelihood of different outcomes.

Contact us directly to dive deeper into this report, along with exploring these and other case studies further. Learn how CEB helps leading legal teams create strong processes, prioritize areas of focus, and remove inefficiencies—ultimately delivering faster advice to clients without delaying business decisions.