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Contracts, Control and “Presentation” in IT Outsourcing

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## Introduction

Adoption by some of the largest international corporations has seen outsourcing become a key component of the information technology management agenda. Critical to this agenda is the formulation of comprehensive contracts. For this, legal experts and/or advisors can be consulted, but enforcement depends very much on client and vendor account managers. In this chapter a theoretical analysis of the contract contrasted with empirical data from client and vendor post-contract management practice revealed that the contract has a number of purposes beyond its sole legal nature, outlining a number of control dimensions both parties aim to enforce. Here we present findings from 13 organizations on the role of the outsourcing contract in ensuring control over the client’s outsourcing destiny (for this subject see also Chapters 3 and 11).

Research has shown that the client-vendor relationship is indeed more complex than a mere contractual transaction-based relationship (Kern, 1997; Kern and Willcocks, 2001; Klepper, 1994, 1995; McFarlan and Nolan, 1995; Willcocks and Cullen, 2006; Willcocks and Kern, 1997; Willcocks and Lacity, 2009, especially Volume 2). A major complexity is the near impossibility of presentation\(^1\) of future requirements in long-term deals such as outsourcing, due to the volatility of information technology and the likely changes in user and company requirements. Thus suggestions have been made that the client-vendor relationship has to include relational contract and/or partnering dimensions (Kern, 1997; Poppo and Zenger, 2002; Willcocks and Kern, 1997; Willcocks and Cullen, 2006 – see also Chapters 3 and 4). By the mid-2000s, partly induced by broader international regulatory pressure on corporate governance, the importance

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\(^1\)“to make or render present in place or time; to cause to be perceived or realized as present” (Macneil 1974a).
of establishing a broader framework for IT governance has been stressed (Weill, 2004). However, research and industry practice has clearly shown that a central focus has to remain on the contract and hence its enforcement in the post-contract management stage (Lacity and Hirschheim, 1993, 1995; Lacity and Willcocks, 2009).

A neglected area in research to this day is discovering and explaining which contractual dimensions are eventually operationalized. Such information would allow practitioners to better understand and prescribe the contractual dimensions of the client-vendor relationship. Moreover, we conjecture that these dimensions essentially define the client company’s and to some extent the vendor’s, control agenda over whether the major objectives of the outsourcing arrangement are being achieved. Pilot analysis of two IT outsourcing contracts revealed a number of dimensions that pervaded the post-contract management agenda. In each case the client attempted to maintain control through two detailed contractual clauses/schedules, acting essentially as a third party judicial entity. By control we mean the process by which the client company initiates activities to assure contractually agreed terms are by the vendor(s) company delivered in full and according to expectations and objectives: “Control, in other words, is aimed at ensuring that a predictable level and type of performance is attained and maintained” (Child, 1984, p. 136).

In this chapter we analyze the role of the contract in IT outsourcing to elucidate the post-contract management agenda. This agenda essentially prescribes the operationalization of the contract and the control dimension in IT outsourcing. Drawing upon two precedent contracts, we highlight the clauses actually being used. Next, we present findings from an exploratory research study into the client-vendor relationship that reveals how organizations attempt to enforce the contract. The ensuing discussion identifies five different purposes of the contract in the client-vendor relationship, which allow us to infer that a number of contractual dimensions also define the control agenda for the client in the post-contract management stage.

The IT outsourcing contract

The contract in outsourcing has been described as a mechanism that establishes the balance of power between the client-vendor (Lacity and Hirschheim, 1993). Contracts essentially have to be as “airtight” as possible (Lacity and Hirschheim, 1993; Fitzgerald and Willcocks, 1994abc; Saunders et al., 1997), because research has shown that vendors tend to refer to it as their chief source of obligation (Lacity and Willcocks, 2009). Vendors, however, would prefer to see the contract as a working document (cf. EDS lawyers Hartstang and Forster, 1995), giving them flexibility to suggest improvements and new services. Clearly, this is