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# Procurement of Legal Services: How Customers Professionally Procure Legal Services Today

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## Abstract

When companies need legal services, they typically turn to outside counsel and law firms (“buy”; BigLaw). Increasingly, larger companies start or enlarge the work force of their legal departments to perform the required legal services (“make”; insourcing). As a new option, the legal branches of the big auditing firms (Big Four) and alternative legal service providers (NewLaw, e.g., LPO) are also being considered. Depending on the customer’s (The term “customer” is uniformly applied to both clients of outside counsel and internal customers of legal departments to express the view that providing legal advice is considered a service with customer orientation in either case.) experience and whether or not a company has its own legal department, the purchase of these services, which in particular includes the selection process on the one hand, and the appointment and management of attorneys on the other hand, may occur differently. However, the questions to be raised and the topics to be addressed in this context remain the same. Although the relationship between customer and outside counsel will continue to be diverse, it is mutually beneficial to understand both sides and to recognize the different facets of such a relationship. Further, in any event such legal services and advice cannot stand alone but must fit into an overall solution for the customer’s problem and the challenge he is facing. This article seeks to provide a first overview and to systematically investigate the questions to be posed during the professional procurement of legal services from third party providers, be it outside counsel and law firms or other alternative suppliers. (This article is based on the following publication: Mascello, Bruno (2015) *Beschaffung von Rechtsdienstleistungen und Management externer Anwälte*, Schulthess Zürich (also to be published in English soon). There, you can find further comments and explanations, sources and references as well as an

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extensive bibliography. For the sake of readability and brevity, this article uses the masculine form of pronouns only, but the feminine form should always be understood to be included as well.)

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## **1 Introduction**

The mere addressing and answering of legal issues from a subject-matter expertise perspective only, is no longer enough for a lawyer to succeed in a law firm. The same applies when looking at legal departments, i.e. the head of a legal department and his team, when servicing their internal clients. The legal challenges are not only increasing in number, but are also becoming more international, complex and sophisticated. Thus, to run a law firm and a legal department properly requires not only legal expertise, but the consideration of the economic and operational point of view as well.

A company has to approach systematically the questions of how it intends to provide the necessary legal services and how it will make them available. It can either produce the legal services itself (“make”) or acquire them from third parties (“buy”). If a company has decided to hire a third party, i.e. to outsource the work, the questions will arise as to whom such order is being assigned and according to what terms the work is to be completed. Now, as before, external law firms and outside counsel continue to play a significant role in the provision of legal services. As a consequence, the expenditure incurred for this type of service is becoming of greater importance to companies and to the entire economy. Hence, the professional procurement of legal services is inevitable for a customer.

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## **2 A Changing Legal Market**

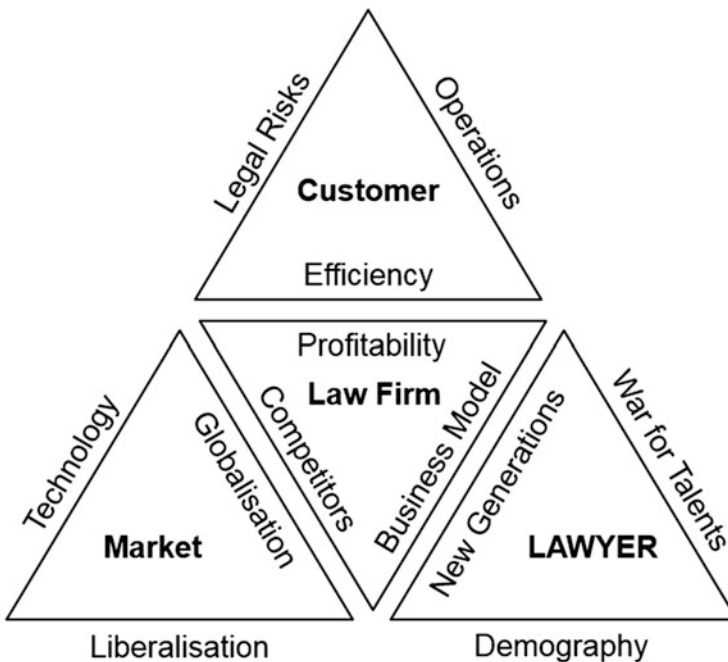
### **2.1 General Remarks**

The financial crisis of 2008 served as a game-changer in the legal market. Many of the law firms hoped—and some still do today—that the negative effects that were unleashed would represent an interim economic lull only, that the effect of this recession would soon abate and the “golden age” return. This financial crisis, however, has also caused structural, irreversible changes in the legal market. It has especially raised sensitivity and awareness with respect to the relationship between law firms and their customers. This in turn affects how companies organize themselves for the purpose of obtaining the necessary legal services. The processes set in motion by the market changes are thus not only temporary in nature; rather, they will remain and may even become more profound. These processes represent a “new normal” that has to be understood and to be adjusted to.

## 2.2 Complex Trend Pyramid

Changes have always affected the legal services market. The situation today, however, is in many ways different: the changes are more diverse, occurring on many fronts and simultaneously, showing greater dynamism and intensity, and are characterized by a structural rather than a cyclical nature. In order to understand these complex changes, it is imperative to outline the various trends in a more simplified way by making use of the trend pyramid as set out in Fig. 1.

Looking at the legal market in a strict sense, this is characterized by the following three major changes: liberalization, globalization and increasing application of technology. The legal market shows only a slow but continuous trend towards liberalization: for example, consulting bans and the lawyers' monopoly are being further relaxed, and barriers to entering the market are being eliminated. The economy is growing and expanding, the markets are becoming more global, and customers' business operations are becoming increasingly more international, particularly as they are entering more and more new markets (especially also SME). In connection with this, regulation and complexity of legal issues are also expanding. Technology is playing an increasingly important role for the efficient provision of legal services, and the technological possibilities are already much more advanced. This helps with the rising cost pressure, the fragmentation of the value chain in the production of legal services (disaggregation), and the improvement of knowledge management.



**Fig. 1** Complex trend pyramid in the legal market (author's own material)

Since legal staff comprise—at least for now—the most important resource for the creation of legal services, the changes in the labour market for lawyers are of great importance. These are mainly characterized by the following three criteria: demography, a shortage of talent (war for talents) and a new generation of employees. With the demographic shift in the age pyramid—compared to the baby boomer generation—fewer and fewer workers will be available to future labour markets. With this quantitative change, circumstances will be accentuated in the future. Not only will outstanding talents continue to be rare and sought after, but less qualified staff will become less available, too. The migration of foreign workers will not really contribute to relieving the situation. Considering that soon, the majority of the employees will come from the so-called Generation Y, it would be advisable to deal with their needs and motivation at an early stage. For members of that generation, for example, the so-called “work-life balance” has a higher priority; they want more flexible and interactive work and ask for different working time models, alternative career models as well as training and education.

The law firms today are challenged on three important fronts: changing and increasing competition in the legal market, declining profitability and the question of finding the right business model. The number of lawyers is increasing steadily, which—from a mere quantitative perspective—is already leading to increased competition among lawyers. Further, the competitive environment has become more varied and more complex, e.g. by the appearance of alternative legal service providers, which are not considered traditional law firms. In addition, to achieve or exceed profitability targets, law firms will be forced to organize themselves more professionally across the board by applying best practices when running an enterprise. Further, the current business model of large business law firms, which are organized like a pyramid and take advantage of the so-called leverage rate, is being called into question. Previous work and working time models seem to have lost their appeal for recent generations, and the broadly applied “up-or-out” career model is not as promising and accepted any more as it may have been in the past.

### **2.3 Trends with Customers**

One of the biggest changes will take place at the customer level. This is relevant since ultimately they are the source that triggers the demand for legal services in the legal market. Customers are facing the following challenges, the resolution of which they may pass on, in one form or another, to outside counsel and to other service providers: the continuous increase in legal risks, a compulsory increase in efficiency and the need for the optimization of operations.

The growing juridification of business life and the rise in regulatory efforts calls, on the one hand, for legal advisers with a sense for the whole (generalists), and, on the other hand, for the processing of vast amounts of information, which requires an increased use of specialists. New topics are emerging and are becoming more important (e.g. compliance, corporate governance, regulatory issues and, in my opinion, also risk management). The globalization of business is accompanied by

other hazards (e.g. penalties) which require better control of the legal framework. Hence, customers have an interest in externalizing these legal risks, which especially affects all legal service providers directly. This may lead to growing legal budgets in companies.

Despite the corresponding growing budget for legal expenses, however, both cost-savings pressure and the need to increase efficiency are also on the rise for general counsel, hence their growing demand for effective cost management. This means that legal departments have to deliver more than before (“more for less”), and even more efficiently than before, that is: “better, faster and cheaper”. Finally, legal departments have to demonstrate how they contribute to the execution of the corporate strategy and how they generate added value (including applying suitable KPI). All these new demands will be passed on to their legal service providers.

Despite the increasing demands in substantive terms, the management of a legal department today requires much more than simply being able to answer internal customers’ legal questions. The criteria for an optimal management of the legal function have become more varied, in particular from an operational point of view. As a result of requesting efficiency improvements in the legal department, the operational issues with respect to the provision of legal services are increasingly coming into focus. The required back office operations are being structured in a more professional way, they are being reorganized and made more efficient. The organization is carried out along the value chain and the relevant processes of the company. Moreover, the purchase of services is becoming more professional (e.g. involvement of the procurement department, tender processes and requests for proposals, focusing on preferred suppliers, considering suppliers with lower rates), and alternatives to law firms are being considered (e.g. LPOs). The previously applied hourly fee model for outside counsel will increasingly be called into question, and alternative compensation models may increasingly be taken into account.

Today, moreover, other trends are noticeable. For instance, the work previously outsourced to law firms is increasingly being taken back again and dealt with by internal resources (insourcing). The composition of the law firms mandated by the companies is being rearranged or their number is being reduced (convergence or panel). Further, smaller and less expensive law firms are increasingly being considered. Dealing with law firms is becoming more professional and institutionalized, compensations are being negotiated in a new and harder way (alternative fee arrangements) and new legal service providers, i.e. providers that are not traditional law firms, are also being considered (legal process outsourcing).

## **2.4 Positioning of the Legal Department**

The roles of the general counsel and in-house counsel are also subject to constant change. On the one hand, the growing legalization and regulation in each industry means that the legal department is playing an increasingly important role in the company. On the other hand, legal is losing the status of a singular function and

must, similarly to other business units and functions, constantly prove to be an efficient and cost-effective service provider.

Today, the legal department has a more prominent position in the company. In particular, the general counsel is now perceived as a risk manager. He is also expected to provide general problem-solving beyond legal subject-matter tasks and to act as a co-designer of the company's strategic development. Consequently, legal strategies are being integrated into corporate strategies. The presence of outside counsel in the business is being reduced and, to the extent possible, the provision of legal services is being lowered to the level of a commodity.

The importance of a legal department and thus the value of legal advice provided within a company can be determined by the position of its general counsel in the leadership hierarchy. There are different views on whether and how a general counsel should be represented, or be present, at the (extended) executive level or in board meetings. There seems to be a trend in different countries that the general counsel should participate as an advisor in board meetings and have a "seat at the table" of the executive management of the company. This ensures a systematic and timely involvement of the general counsel and ties him into the business responsibility.

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## **3 Legal Sourcing**

### **3.1 Procurement of Legal Services as an Operational Task**

The mandate of a legal department ideally includes the responsibility for the complete delivery of services with respect to legal issues in the company. Various options are available to a company to cover its demands for legal services. From a company's point of view, it is basically irrelevant whether these services are rendered through internal (make) or external resources (buy). It is only relevant that the company obtains a legally correct and adequate solution for the required purposes, which is sufficiently customized, customer-oriented and cost-efficient.

Accordingly, an essential component of operating a legal department is the purchase of legal services and the management of outside counsel. The general counsel has become the actual buyer and an informed customer of the outside counsel. In this way, the otherwise existing information asymmetry between non-lawyers and outside counsel can be reduced or avoided. The involvement of external consultants is often connected to the fact that the related costs are associated with the legal department and therefore these expenses are allocated internally to this function. Because these costs typically account for a share of the annual legal department's cost, the related impact on the budget ought not to be underestimated. These costs appear regularly on the CFO's radar, and the general counsel is required to provide the necessary information and explanations. Thus, a policy that regulates, in particular, the provision of legal services by the legal department and the integration of these services into the value chain of the company, can significantly increase the efficiency and effectiveness as well as the standing of a legal department.

### 3.2 Options to Procure Legal Services

Whether and how someone should do a job does not only depend on whether or not he can actually do it. Rather, the question is whether or not it is efficient to perform the task. Since there are various ways of doing a job, there is the desire to do it as optimally as possible—depending on the specific needs on an individual basis. Consequently, the various service providers must be carefully selected and coordinated in order to ensure smooth cooperation. The need for coordination is also reflected in the many terms used to describe the various methods of legal sourcing. In order to reduce the confusion around these terms, it may make sense to organize and define the key terms as suggested in Fig. 2. It can mainly be distinguished by the service provider (make or buy) and the place of provision (out-, near- or offshoring). In my view, “rightsourcing” seems to be the proper generic umbrella term, since it addresses in the best and most neutral way possible both “make” and “buy” variants, including the sub-varieties and also the decision-making process for the most efficient and effective way and place of service provision, i.e. in terms of personnel, financials and time.

### 3.3 Legal Department vs. Other Legal Services Providers

An organized legal department will first carefully analyze the overall legal services a company may need, and then identify the tasks and core competencies that should stay in-house and not be outsourced. Then it must assess whether a particular activity is of high strategic importance for a company and could have a significant financial impact on the balance sheet. Consequently, this activity may comprise a relevant threat to the company’s reputation, represent an important competitive advantage, or could, in general, have a major impact on the company with respect to other risk aspects.

Further, an increasing number of innovative customers do not only consider traditional law firms but also any other legal service providers that have become

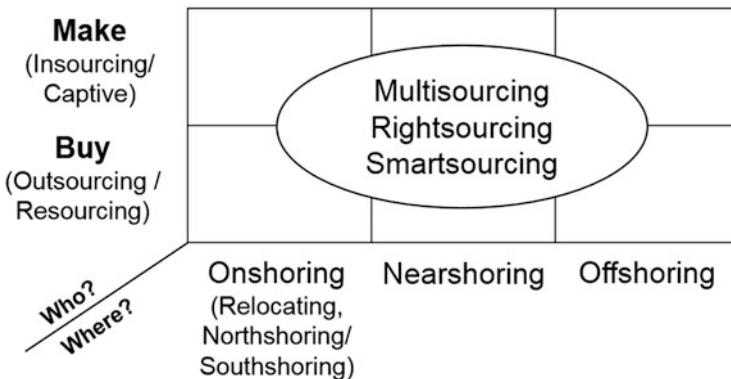


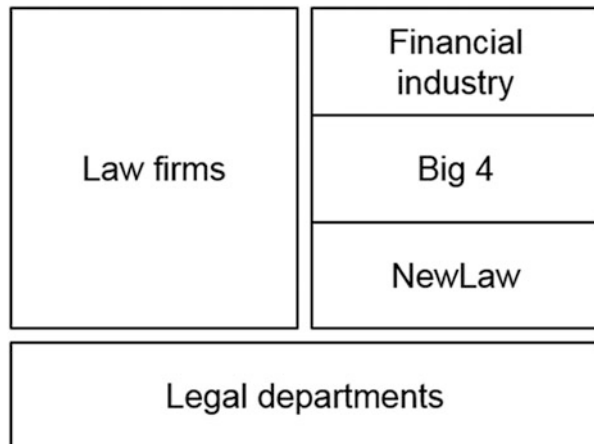
Fig. 2 Terminology in legal sourcing (author’s own material)

available in the market by now. The decision may depend on the question as to which core activities need to be performed by qualified lawyers only. When considering the entire value chain to produce legal services, it is not necessary for all steps to be performed by qualified lawyers alone. The competitors of the big external law firms (“Big Law”) that offer the same or similar services as law firms, but at more favorable terms, include the legal branches of the big audit and accounting firms (the so-called “Big Four”) on the one hand, and all other providers in the financial sector on the other hand. These providers also cover all those providers that offer their customers certain selected legal services only (e.g., banking institutions, legal protection insurance and fiduciary companies).

In addition to these alternative legal service providers, a next level of development is evolving. Third parties only perform certain parts of the entire value chain for the creation of legal services by offering new concepts and business models. These suppliers complement the legal market with new competition—initially mainly in the low-price segment, i.e. the consumer/retail legal services market—and are designated as “New Law”.

Numerous and different drivers and reasons exist for deciding in favor of “make” or “buy” on the one hand, as well as for mandating a law firm or an alternative legal service provider on the other hand. The decision will depend on the respective company, legal department and individual situation. In any event, an attentive external legal service provider should make sure that he understands the customer’s analysis and motivation when offering his services, since the customer defines the playground for business. It may be relevant for all outside service providers to note that there seems to exist a tendency in different countries to increasingly insource tasks which are associated with the expansion of the in-house legal department. The interest in doing more with internal resources particularly also concerns tasks in connection with transactions (e.g. M&A). This is also cost-driven, considering that an hour of an outside counsel may cost up to three times as much as an hour of an in-house counsel (Fig. 3).

**Fig. 3** Provider of legal services (author’s own material)

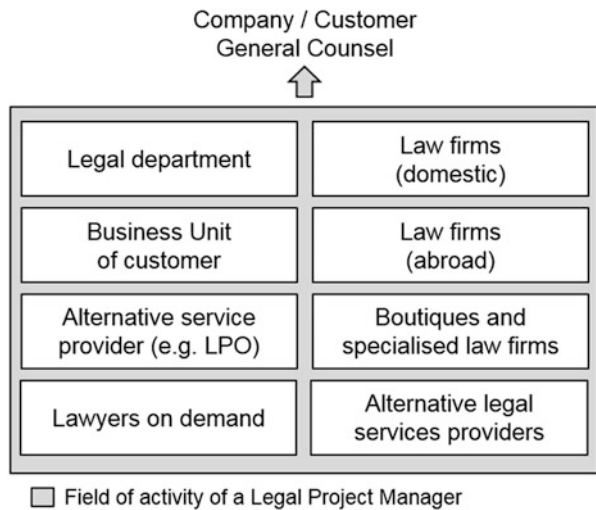




### 3.4 Relevance of Project Management

The disaggregation of the value chain and the consideration of various service providers require one key skill: project management. Neither legal departments nor law firms usually address the important question determining success, namely, who will assume the procurement of the various individual components of work and who will coordinate them with each other to form a logical and functioning whole at the end. Securing functioning interfaces and the perfect co-ordination and integration of the single pieces into an overall solution, which is certainly facilitated significantly through the utilization of IT, will ultimately decide whether and to what extent the efficiency and quality gains envisaged by the unbundling of services will be achieved. The designation “one-stop shop” will therefore no longer only apply to a full range supplier from a technical perspective, i.e. covering all legal subject-matters; rather, this will now also include related services of a non-legal nature, with which someone—for example, a law firm—assumes responsibility for delivering and supporting work and projects from a single source. This includes in particular the responsibility for the selection, coordination and the reassembly of all partial services into a whole, single result, no matter who provided or produced the individual services. However, such a service requires knowledge and experience in project management, which may create new job profiles like those of a legal project manager (Fig. 4).

**Fig. 4** Field of activities of a legal project manager (author’s own material)



## **4 Professional Procurement Process**

### **4.1 Drivers**

Nowadays, a customer procures external legal services in a much more professional way. In doing so, several objectives are being pursued: the customer ensures, among other things, a detailed analysis of the legal market, an improvement of the purchasing terms and a reduction of process-related costs, and as a further result, a reduction of total expenditures (i.e. total cost of ownership). Improved information gathering and reduction of the number of suppliers provides increased transparency of the framework agreements and cost structure, which in turn allows the customer to achieve more efficient supplier evaluation and control. Moreover, legal departments are required to explain why they still outsource work and why external resources cannot be procured more cheaply. CFOs then often refer to the business consulting industry, which already suffered from and adapted to the new procurement principles earlier.

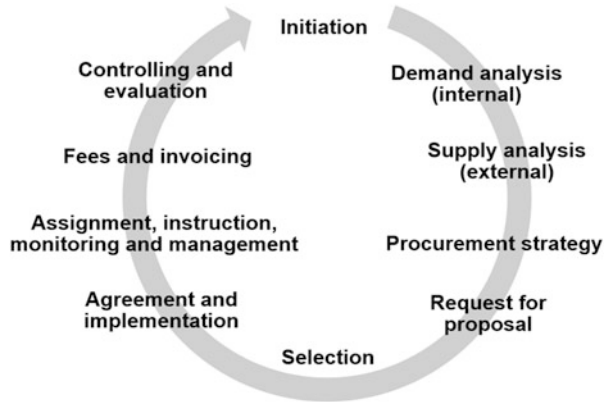
### **4.2 Procurement Process in Ten Steps**

The purchase of legal services features a few special facets. It is therefore necessary to separately address the underlying steps a customer typically faces in this particular procurement process. Outside counsel claim that the procurement of legal services cannot be compared with the purchase of simple commodities like screws. They then often refer to the key elements of the relationship such as trust, independence and the attorney-client-privilege. However, there is no sensible reason why the procurement of legal services should escape—even tough—price discussions, as long as this does not materially affect the performance. A customer may reasonably assume to be informed by its suppliers when and how such a consequence is linked to the expected and agreed performance.

It does not matter how large a customer is, whether it has its own legal department, how many people are employed and how big the available budget is for the procurement of external legal services. During procurement and when dealing with outside law firms, every customer will regularly be confronted with the same or similar questions and problems, which will become relevant to a greater or lesser extent, depending on the individual situation. Therefore, customers follow an organized procurement process, which can be divided into ten steps encompassing the entire cycle, starting from initiating the process and ending with the evaluation as set out in Fig. 5.

It is important for legal service providers, in particular outside counsel, to know and to understand this process and to realize that most of it is handled behind customers' closed doors without their involvement. Therefore, it becomes even more important for potential suppliers that customers are able to identify them as prospective participants in the procurement process at all. Once a supplier has received a request for proposal, he must understand which time window is available

**Fig. 5** Professional procurement process in ten steps (author's own material)



and what is required for a successful pitch. A customer, being part of defining the very procurement strategy, may also decide to install a so-called “legal panel” with preferred law firm providers. The same may be established for alternative providers.

### 4.3 Role of the Procurement Department

In order to execute a project for the procurement of legal services, identifying dedicated resources, setting up a company-wide project team and finding and making available the right people with the required knowledge, experience and skills should be considered. Tasks, competencies and responsibilities must be defined for and allocated to each role. Trust and loyalty are of great importance here. The team has to draw up a detailed project plan with timelines, milestones and deliverables. Measurement criteria, as well as the process, have to be defined.

Further, the extent of involvement of any existing procurement department should be determined. In companies, the bundling of supplier management by the purchasing or procurement department has long been accepted as standard and is considered best practice. By now, however, there is already talk of the electronically supported procurement of legal services (e-sourcing). Legal departments have often been spared from the usual cost-cutting exercises; on the contrary, often they could even expand their resources. In the eyes of CEOs and CFOs, their general counsel—and in this respect not particularly actively supported by their outside counsel—have demonstrated far too little seriousness in dealing with their own cost-saving measures. As a consequence, general counsel are now seconded by the procurement department. This is not a discussion about procurement now becoming the decision-maker when it comes to mandating outside counsel. Rather, in my view, general counsel should welcome cooperation with these new partners, recognize their expertise and specifically use them to improve their overall efficiency. This ranges from tasks associated with the processing of a mandate (e.g., payment,

accounting and controlling activities) to logistical support (e.g., in the planning of the process or the preparation of tender documents) and covers the analysis and evaluation of different data and numbers (e.g. for KPI).

For outside counsel and their newly established so-called business development departments, understanding the customer's internal procurement process is paramount. This fosters a better understanding of the potential points of contact (touch points) on the one hand, and the timing and the extent of any involvement with the customer on the other hand. If suppliers are organizing themselves, customers should in fact rapidly get a team ready as well, i.e. one that includes specialists like procurement people, to negotiate with their suppliers on an equal footing.

#### **4.4 Gender Diversity**

Similarly to the question as to whether the procurement department should play a role in buying legal services, a gender-related factor needs also to be taken into consideration. Large and international companies have already been facing the obligation to pay attention to diversity requirements, for example, in connection with the requirements related to Corporate Social Responsibility programs. This plays a particularly important role when recruiting employees in order to avoid any unjustified discrimination. In this respect, however, gender represents merely one of the many elements of diversity.

There are three good reasons why it should be in the best interest of a law firm to take the "gender factor" seriously into account. First, there are direct economic reasons for the importance of the requirement for a gender-mixed composition of the workforce. It could be shown that mixed teams are more innovative, successful and profitable. Second, a gender-mixed composition of a law firm (gender diversity) plays an important role for customers when it comes to assigning mandates. The large law firms' up-or-out model and the fact that today only a few women have achieved partner status in law firms inevitably leads to the conclusion that many female outside counsel leave the law firms before reaching the partnership level. By going in-house and switching to the other side of the table, they now become informed buyers. Third, gender-related differences in behavior exist when outside counsel are selected; i.e. when procuring legal services, female general counsel do not rank the same criteria as important as their male counterparts do. For male general counsel reputation, personal relationships and trust are important; female general counsel, however, put more emphasis on the requirement that outside counsel understand their business and their needs, respond quickly and communicate effectively and efficiently.

## **5 Management of Law Firms**

### **5.1 Framework Agreements**

Once a complex tender process has been conducted and the desired law firm is selected, I recommend that the result obtained is contractually sealed in order to facilitate implementation and to avoid any misunderstandings. Framework agreements are particularly useful in those cases when it is expected that there will be regular assignments between the parties in the future and that the points to be negotiated will be repeated. Such agreements also make sense when multiple parties are involved—such as in international law firms with different locations or in a network of law firms. With the one-time negotiation of all key points set down in a framework agreement, the subsequent process of placing orders should be facilitated and become more efficient. This will also replace the retention and engagement letters prepared by the law firms. If a framework agreement is to fulfil its purpose, it should be designed in a detailed way and must, from a content point of view, be more than just a letter of intent. It should, *inter alia*, provide information on the range of services and the content of the work (including accessibility), conflicts of interest, the nature and extent of staffing and team structures, communications and reporting as well as contact persons, fees and compensable work and expenses (in particular the extent of it) and invoicing (including outside counsel retention and billing guidelines).

### **5.2 Control of Law Firms**

A company has already achieved a great deal with the proper selection and adequate instruction of outside counsel. However, this reflects only one side of the coin. In order to achieve the goals—especially the financial ones—related to the procurement of outside counsel services, a continuous management of the lawyers and the related mandates is required. Otherwise, there is a risk that hard-fought and successfully negotiated positions, as well as the attained rights and benefits that accompany them, may ultimately not be enforced and realized. This management task requires time and resources, and that must be considered in the annual budget and underlying structures of a legal department. The increasing monitoring of the relationship with outside counsel is based on the assumption that they may perform more efficiently and effectively when obligated to keep their customers informed. This customer behavior is based on the fact that cost controls have become more important for them as well, which is why regular reporting and updates by suppliers on the status of actual costs versus the agreed budget is necessary. Furthermore, outside counsel has to provide summaries on the assigned mandates to identify possible alternative resolutions during a mandate and to perform a critical assessment at the end of a mandate (post-mortem evaluation) in order to map out any room for improvement for future cases.

### 5.3 Alternative Fee Arrangements

If an outside counsel is entrusted with a mandate, it is quite common that it will be settled and paid for on the basis of hourly fees. At most, the hourly rate may be further graded depending on the subject area, country or seniority of the lawyer, and apparently also on gender. When charged by the hour, the customer is paying solely for the lawyer's activities, which is basically paying for the lawyer having worked. However, an efficient and qualitatively accurate performance of the lawyer is neither agreed upon nor guaranteed. The customer thus has an interest in building an appropriate incentive structure to steer a lawyer's performance in these areas. From a customer's point of view, a fee should not be calculated according to the time spent on a mandate (input) but rather on the basis of the benefit or (added) value the lawyer has generated for the customer (output).

Various developments show, however, that alternative remuneration methods are steadily on the rise, which will lead to changes in the future. Customers are demanding more cost transparency and they expect explanations regarding the fee compensation system. This is probably not least of all due to CEOs and CFOs demanding that such models should be applied. These models often do not only deliver cost savings, but also promise better performance by outside counsel. Further, alternative billing methods are based on the presumption that someone who claims to be a specialist or an expert (here: for legal advice) should know how much time is required for the completion of pre-defined tasks.

Fixed fees are the easiest way to use an alternative fee arrangement (AFA). For the avoidance of doubt, discounts or rebates as well as blended rates are not considered to be an AFA. With such mechanisms, a general price reduction is granted on existing standard hourly rates only. With so-called "volume discounts", a discount will be granted—in terms of a loyalty rebate—upon reaching an agreed sales target. Therefore these mechanisms do not constitute a real alternative compensation model since they do not change the incentive model. The same applies to cost and budget estimates, since they are often not binding and simply constitute an indication of the expected total fees. For the sake of argument, however, these mechanisms are not worthless and should be viewed as an appreciable attempt to provide at least some comfort to the customer.

### 5.4 Invoicing and Evaluation

After a legal service provider is invited to present itself and its services, then also successfully wins a pitch and does an excellent job throughout the mandate, there is one final moment of truth left: the invoice. This last element should not ruin the valuable reputation a provider has built up with a customer over a long period before. Unfortunately, reality is somehow different, and it is not unusual that customers are surprised with this very last item of deliverables. This is a pity since it goes against the cheapest form of customer acquisition and retention: customer satisfaction that leads to re-mandating a service provider on the one

hand, and providing recommendations and references to further potential customers on the other hand. Customers maintaining a panel of service providers usually conduct evaluation reviews every year to assess whether the selection is still adequate. If required, e.g., when the service is not as promised or agreed upon, the required corrective measures are taken.

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## 6 Final Remarks

The business relationship between customers and outside counsel has not changed much over many decades. Recent years, however, have seen the emergence of a “new normal”. This is primarily driven by the customers, who are supported in their intent to bring about modifications to the current situation by new legal service providers, which are also interested in creating a substantial change in the legal industry. It remains to be seen what consequences these changes will ultimately generate.

The good news for legal service providers is that customer demand for legal services will continue to exist since there are no substitutes for it. What has changed or will change, however, is the following: the role of general counsel has changed; customers and legal departments are improving efficiency and optimizing both staff deployment and the volume of work; less outsourcing to third parties is expected and is being replaced by more insourcing; the procurement of legal services is changing and being professionalized; and finally, price amendments, increased demands and changes in technology are likely to occur.

The role of in-house counsel will have to change and adjust accordingly. This does not only create duties and pressure, but also offers a vast variety of new opportunities and exciting tasks that must be exploited and executed.

### Liquid Legal Context

By Dr. Dierk Schindler, Dr. Roger Strathausen, Kai Jacob

Mascello provides a great overview on the changed and further changing dynamics around the cost of providing legal services for legal departments—whether incurred by “building” the services inhouse, or by “buying” them on the market. He points out the structural changes in the legal market and consolidates those dynamics into a very insightful graphic that connects the impact on all main elements: lawyers, law-firms, customers and the broader legal market.

The author determines liberalization, globalization and the increasing application of technology as the fundamental forces that disrupt the market, very much in line with what we have just heard from Hartung and Gärtner. The liberalization brings about not only new players (e.g. LPO’s), but also opens up the market for new leaders in services: think of Ross’ suggestion of

(continued)

legal advice or a law firm at some point potentially becoming one branch of the services of an LPO. While globalization increases the pressure on local legal service providers, the polycentric approach that might be part of the answer to the challenge (see Markfort) makes it even more complex. Is this development building a case for the big accounting and audit firms that—as Sako points out—have by far the largest global presence?

Mascello also asks the question as to what all of this means for the positioning of the legal department. No more hiding behind a strong CFO, it is time to lead for legal departments, we have heard Fawcett state. Mucic expands that notion to the fundamental impact lawyers and legal inhouse work has on the culture of a company. As many traditional legal services are becoming candidates for automation or even a legal commodity, it is critical to position the legal department beyond a mere “problem solver”. It is vital that we are able to credibly explain its integration into the corporate strategy and its value creation for the company.

Mascello provides a clear overview on the various sources for legal services and what a professionalized procurement process looks like. This makes a strong case for professionalizing the operations of legal departments by introducing a legal operations function. Brenton is a true leader in shaping this function and driving towards a standard model of legal operations, also by means of founding the non-profit organization and collaboration platform CLOC.



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