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Legal



## Just cause

A new approach to  
sourcing legal services

Legal Management Consulting

# Introduction

Although digital transformation of the legal function had already begun, the coronavirus pandemic has highlighted the need for agility—forcing general counsel (GC) to accelerate the pace of change.

Furthermore, the pandemic has also created huge cost pressure on companies with disrupted supply chains and rafts of new temporary and permanent legislation to adhere to. Inevitably, this has spilled over to the GC. The easy thing has been to put pressure on outside counsel to contain costs—but this has been the case for years. However, GCs are looking increasingly to technology to automate repetitive tasks to save on human resources, and looking at alternative sourcing approaches to fulfil their various requirements.

Sourcing typically looks at how you mix the supply of the services you need—and deciding whether you perform them in-house, outsource to law firms and managed service providers, or even create in-house low cost shared service centers.

In many organizations, the main barrier to change is the perception that the legal function is doing fine as it is (if it's not broken...). Changing sourcing models is no small undertaking—it requires commitment and time, and a strategic approach. Because of the many complexities involved, it is often difficult to obtain sufficient insight through small-scale piloting, and difficult to assess the potential cost of a full-scale transformation.

A new way of working is emerging, based on a sophisticated approach to sourcing.

# The rationale for new sourcing models

The rationale for alternative sourcing models can be for a multitude of reasons. These will vary by industry and also by stage of the economic cycle—industries growing fast often have different rationale from those in contraction. Common reasons include:

-  Lack of capacity/experience to do the work in-house
-  Requirement for specialist or technical expertise
-  Scale or geographical coverage
-  Value for money (if it costs less and it is quicker to deliver through outsourcing)
-  Competitiveness (external best practice and information on peer activity)
-  Cost efficiency of alternative legal service providers (often with additional expertise not prevalent in traditional law firms)
-  Short-termism of projects (when specialist knowledge or skills are required for a short period of time, it may not be worth employing the specialists in-house)
-  Knowledge transfer (we have seen some companies use “build-operate-transfer” models as they transition knowledge)
-  Workforce retention (good employees can be freed up to be strategic and creative through outsourcing potentially less interesting, but necessary work, or applying automation)

# Aligning sourcing models to company strategy

Traditionally, the GC built the in-house team and individual lawyers decided when to outsource work to outside counsel, often choosing the provider themselves and building relationships in the process. In many jurisdictions, the procurement function started playing a larger role in panel selections and other sourcing options, after the 2008 financial crisis. Outsourcing is now happening on two levels—not just to outside counsel for specialist work, but to alternative managed services providers who are playing a significant role in fulfilling the more routine legal needs of the GC.

In-house lawyers are focused on the most strategic items, as managed services providers deliver the day-to-day services that would be too expensive or time-consuming to do in-house. Many legal managed services providers have wider business expertise, and are able to bring project management skills, deploy technology, and provide advice on a broad range of business and legal issues.



Outsourcing decisions should be made by considering first the nature of the work being done and how it is currently delivered. A variety of factors need to be considered, including:

- What does the business expect from the legal function—how do the service users see the legal department contributing to the organization's strategy and competitive advantage?
- What does the legal function currently do? Changing the sourcing mix requires an understanding of the department's workload and the complexity of the tasks being delivered.
- What skills are currently in the team and what does it lack? The gaps could be filled through recruitment or reliance on external resources.
- How is outside counsel currently being used, and how has it evolved?
- Is the outside counsel arrangement specifically designed to underpin the department's risk management strategy?
- How does the organization define excellent legal services—and how does this impact sourcing decisions?
- What does the regulatory regime permit—are there limitations on what can be “farmed out” in terms of work or data?



As legal departments refine the sourcing approaches, we see the following models used most commonly:

- In-sourcing: Recruiting permanent staff to perform the tasks in-house, or using contract staff if there is a skills gap, and having them work as part of the team;
- Project-based outsourcing: Typically engaging a law firm or an alternative legal service provider for tasks or projects involving specialist skills, or a technology/business focus on a project basis;
- Captive shared services: Creation of internal, wholly-owned, low cost shared services to provide support with routine, higher volume tasks; and
- Managed services: A full or partial outsourcing of operations, the legal department, or a function (e.g., contracting) to a legal managed service provider typically with contractual commercial incentives to reduce the cost of delivery over time.

Recent years have also seen an increase in the use of contingent workers—temporary workers potentially working for a variety of employers at short notice, and crowd-sourcing for specific delivery—but this element of the workforce strategy could be considered for in-sourcing, captive shared services or managed services.

# Technology as a key enabler

Providers of outsourced and managed services often use technology to manage the transactions and work between the client and the lawyer. They may staff engagements with a combination of their own employees and external lawyers, or just rely on a database of freelancers (or mix of freelancers and employees or external lawyers). Effective technology deployment is critical to support alternative sourcing arrangements.

Outsourcing or managed services arrangements can often be a way of accessing technology solutions that might not make investment sense internally. As ad-hoc requests such as e-discovery, contract and litigation reviews, and GDPR issues don't conform to any pattern or frequency, few companies invest in the technology which is increasingly deployed to accelerate the task by reducing the volume of manual work.

# Benefit realization

With any transformation, it is essential to manage performance and measure the value being derived from the new arrangements. By measuring the effectiveness and efficiency of sourcing decisions, analytics-driven insights can be used to help refine the sourcing model.

The benefit brought by whichever sourcing model the general counsel chooses, should be measurable and specific in terms of improved business outcomes, cost saving, and service delivery improvements. Measures that we have seen adopted include:



In a managed services relationship, much of this should be contractual, and even captive shared services centers will typically have measurement of improvement as a critical success factor.

# Resilience and the future legal department

While the business world has been predicting a 'robotic takeover' for years, the reality has proven for technology to be an aid to work, rather than a replacement. In the legal profession, it is largely because the human traits of professional judgment, intuition and advisory skills, cannot be automated, or replicated by machines.

The legal profession is notoriously complex, which has given rise to the need for the general counsel of the future to be prepared to develop technical skills, and collaborate across work streams, with advisers and in-house professionals.

Overall, one of the most important traits is resilience throughout change. Embrace change, and respond with agility. Building the right sourcing model is critical to that goal.

## Contact

At Deloitte, we have a broad range of skills to assist you in refining and optimizing your current approach to sourcing and refining your legal operating model. We use multifunctional teams with expertise in legal operations, risk management, technology and change to equip your organization for the future.

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