

Inside, Outside—Outsourced Legal Departments



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Outsourcing has had enormous impact in manufacturing, and more recently in services—notably within the information technology and call center industries. The latest innovation is offshoring, performing such work overseas.¹

INSOURCING

The legal services market has a long tradition of outsourcing; few organizations meet all their legal needs in-house. The main difference from traditional outsourcing models is that the supply of legal services often begins outside, being performed mostly by law firms, some of which is brought inside as legal departments develop.

Organizations that outsource most of their legal work often experience considerable savings as they set up a legal department first to insource the strategic management of legal issues, and then selected areas of work.

Yet as some legal departments increasingly perform more legal work in-house—staffing for the peaks, resulting in increased management costs of large departments—duplication and other employee-associated costs ultimately raise the eyebrows of astute general counsel, often with a resultant swing back towards more outsourcing.

OUTSOURCING THE LEGAL FUNCTION

Notwithstanding careful balances struck between the pendulum swings of legal department one-man-bands and

mini-feudal-empires on the one hand, and other advances led by DuPont and GE, on the other, there remains considerable scope for improvement. Many legal departments lag behind finance and other teams driven by more meaningful metrics—and cost certainty—who no longer assert they are somehow different and ought to be excluded from the normal rigors of management.

Asserting such differences may work for some legal departments for a while, especially in times of crisis, yet the perceptions created might prove their undoing. For example, another department that fostered a perception of “trust us, we’re the experts; just let us do it our way” were information technology specialists. For many IT departments, the result was not, however, a preservation of special status, or even forced integration; instead, whole IT departments were simply outsourced.

Sure, there are differences between IT and legal departments, yet some organizations might seriously consider outsourcing pretty much the entire legal function, too.

The biggest obstacle is that the most likely candidates, law firms, don’t seem up to the task, for several reasons. The most obvious is that firms carry too many conflicts; yet ironically, legal departments themselves have partly solved this by an aggressive interpretation of conflict rules which mean that many large law firms already work for only one major player in each industry. Another conflict, between the interest of law firms (maximizing revenues) and client organizations (minimizing legal costs), can mostly be addressed by effective contract management.

The main reason why law firms aren’t such great candidates as outsourced legal departments is that they’re traditionally “client-focused,” but only from a law firm perspective; that is, responsive and service-driven, rather than truly focused on value to the client. Moreover, their systems focus on such things as

hourly billing rates, budgets, leverage, and disbursement recovery. These are important (for law firms), yet reflect internal factors with little real link to strategic organizational value.

INSIDE-OUTSIDE

An alternative involves specialist outsourced teams that provide the services of legal departments for one or more organizational clients. For practical purposes, such as privilege benefits flowing to clients, the “outside in-house legal department” may need to establish itself as a law firm, yet would act more like an in-house legal team than a law firm. It would manage the legal issues of a few clients, delivering strategic advice and managing external counsel. Most importantly, it would retain a deep understanding of client businesses—and possibly be co-located within key business units—and retain a genuine in-house perspective.

This model also offers opportunities for further cost savings. Legal departments currently use countless management systems and processes. With one outside in-house legal department acting for several organizations, systematization would reduce costs, complexity, and multiple reinventions of the wheel. It would also help meet increasing complexities, such as new corporate governance requirements stretching the resources of individual legal departments.

The time has not come to do away with legal departments. But organizations that have already outsourced their manufacturing and other corporate service functions might eventually take that next step towards truly becoming, in effect, managed brands. One day, an innovative CEO might say, “Just do it.” ❏

NOTES

1. See *Shoveling Smoke: Offshoring—The Dawn of International Legal Skills Arbitrage?*, ACC DOCKET 22, no. 6 (June 2004): 14.