

# Why Legal (Process) Outsourcing is a Catalyst for Legal Innovation

*by Dr Ernst Georg Berger, Tamay Schimang and Luise Adler*

Outsourcing of routine legal tasks has been discussed in the German legal market for years. As early as 2011, the consulting firm Schoen + Company carried out a study\* on the subject, shedding light on an outsourcing market that is in demand but not yet developed.

A lot has happened since then – not least due to the emergence of concepts such as legal tech, legal operations, and a general spirit of innovation in legal departments and law firms. However, recent developments on the market (such as the withdrawal of the alternative legal service provider Axiom from Germany) show that it is not always easy to support long-established structures of legal services for businesses by outsourcing in the legal field. Reason enough to take a closer look at,

- what outsourcing in the legal field actually is,
- which hurdles there are, and
- how meaningful outsourcing can not only solve the acute legal problem, but also contribute to the further development of the entire legal function in the organisation.

## Outsourcing – in Principle of Secondary Functions

Traditionally, outsourcing is understood as the outsourcing of an organisation's secondary functions to external resources. The concept of secondary functions must be considered seriously here. It is not about the externalisation of strategic core functions or individual cases. Outsourcing deals with the routine case that nonetheless requires deep technical expertise – and frees internal resources for the exception).

This offers the well-known advantages:

- Time saving and concentration on the internal resources' core business
- Long-term cost savings once outsourcing is up and running
- Continuous quality through specialised consulting
- Flexibility and fast response to peak workloads

For these reasons, businesses have long used outsourcing solutions in other areas, e.g. for IT infrastructure, customer service, accounting, logistics and many other business-supporting processes.

---

\* <http://www.schoen-company.com/de/bericht/legal-process-outsourcing>

The success factors for long-term outsourcing are also well known and developed over many years of experience:

- Clear definition of the areas and functions to be outsourced
- Cost accounting in comparison to internal processing or through "normal" external consulting
- Lack of integration into internal processes and lack of coordination with stakeholders

Taking these success factors into account, outsourcing secondary functions can have an extremely positive effect on the cost structures of a department and indeed strengthen the focus on the core business. This benefits the entire organisation.

### Distinctive Features of Legal (Process) Outsourcing

However, it would be wrong to transfer the experience and principles of classic process outsourcing to the outsourcing of legal or legally relevant corporate functions. In the constantly evolving environment of internal legal departments, a distinction must be made between the assumption of primarily legal advisory activities and the transfer of an entire legally relevant function to an external service provider.

The first case focuses on the legal practice and can be characterised as "**legal outsourcing**". In this constellation, the legal advice provided primarily by the service provider is characterised – in contrast to classical legal advice – by a high degree of standardisation, the use of technical components and integration into the working structures of the legal department or the business areas involved.

In the second case, in addition to legal expertise, the combination with knowledge of process design and technical implementation is of central importance. Here we are talking about "**legal process outsourcing**". Often legal process outsourcing takes place without any legal advice in individual cases (as may be the case with the organisational handling of mass proceedings or participation management). In such cases, however, it is nonetheless assumed that legal expertise is incorporated into the design of the outsourcing processes, thereby creating sustainable, legally secure structures. A non-legal outsourcing provider quickly comes up against their limitations here.

Of course, the transition between the two forms of legal outsourcing can be fluid. For example, if a contract management process is outsourced both technically and in standardised procedures, but the outsourcing provider also carries out individual legal reviews within the contract cycle.

### Hurdles of Legal (Process) Outsourcing

Looking at the German market for legal (process) outsourcing, you get the impression that the majority of outsourcing providers – to put it bluntly – actually

do body leasing. Real legal process outsourcing is hard to find anyway. If there is a lack of resources, external lawyers are hired to handle the additional work.

Although this helps the organisation or its legal department in the short term, it does not achieve the benefits described above. However, if legal outsourcing is understood as a genuine outsourcing of a legal corporate function and if the advantages described above (cost and time savings, quality assurance and flexibility) are to be realised, this approach falls short.

Instead, legal (process) outsourcing requires the conclusive assumption of a routine legal function (e.g. data protection or compliance functions) by a specialist provider who themselves have the correspondingly versatile competencies and thus efficiently and transparently relieve the legal department or the business itself.

But why has legal (process) outsourcing not yet established itself across the wider market? Without claiming to have a complete knowledge of the circumstances in all legal departments, previous observations in this area lead to the following conclusions:

- *Standardisation and digital competence*: legal consultancies are slow to build up competences and capacities that allow a structured development of standardised and automated processes. Especially legal outsourcing requires the final evaluation of an individual case by fully qualified lawyers. However, law firms often lack the personnel and infrastructure for structured outsourcing, while businesses with outsourcing experience regularly lack legal expertise.
- *Unclear cost structures*: if there is no structured legal spend management, reliable cost accounting is complicated and perhaps not even possible. This is further complicated by the fact that legal service providers largely shy away from fixed cost calculations for well-known reasons.
- *Process maturity*: A clear definition of areas and functions to be outsourced is not always easy for legal departments. This includes defining critical success parameters and transfer points.
- *Process integration*: while in-house counsels have in recent years increasingly seen themselves as part of the organisation's business areas and have closely interlinked their legal expertise with these areas, external law firms still find it difficult to see business processes as leading and therefore decisive for the advice they provide over and above their legal expertise. This leads to outsourcing in the legal bubble and prevents sustainable efficiency advantages for the business. In other words: If business processes are not the main focus, only the legal problem is solved, but not the problems of the business units.

## No Outsourcing without Innovation?

Those who are familiar with the above aspects should not be surprised: automation, legal process design, transparent pricing and integration into business processes have been discussed for years at legal innovation events as key innovation goals and have already been implemented.

This circumstance is a call-to-action to the outsourcing provider to not only keep an eye on the legal issues to be outsourced, even in the case of pure legal outsourcing, but also to provide the client with a supporting technical and procedural framework. It is not the task of the outsourcing client to provide this infrastructure. Rather, it is up to the outsourcing providers to offer their customers and clients a comprehensive, innovative, and efficient service.

### But Isn't That an In-house Matter?

"Wait a minute," you will hear the first colleagues calling out. Isn't it the original task of a legal department to set up its own processes and technical means with which its own tasks can be carried out? This is a subject of great controversy and many legal outsourcing projects are actually carried out on the client's infrastructure. However, it is undisputed that internal innovations or legal tech projects require some preconditions: budget, IT infrastructure, implementation skills, alignment with the needs of various stakeholders, negotiations with the IT purchasing department, and much more. It is no secret that this basic work often fails due to lack of resources or budgets. Many a business would not be angry if this infrastructure were provided in the right way and with the right quality.

Neither is innovation work one of the core tasks of legal departments – these are the legal support, control, and defence of their organisation (which is sometimes forgotten in this discussion). Since the focus of digitisation and automation projects in legal departments is often on routine tasks, this only indirectly helps the core tasks – in the case of a successful digitisation project by freeing up resources.

So, what if this result could be achieved more easily and quickly and entire functions could be outsourced, which would then be carried out using state-of-the-art technology and process maturity?

### Legal Function as a Service

In order to achieve this, the next outsourcing generation is called upon, which not only makes use of the classic outsourcing approaches, but also supplements these with the "as-a-service" model, which has now been tried and tested as a digital business model across industries and has proven successful. The above-mentioned advantages of outsourcing are thus supplemented as follows:

- Seamless interface to relevant processes and different user groups in the organisation
- Provision of suitable software solutions
- Scalability of external support

The requirements for legal (process) outsourcing in the sense of a legal function as a service can be defined as follows:

- Conclusive assumption of a **legal function with binding legal advice** and "turnkey" delivery to the in-house team or business units

- **Reliable, transparent prices** and passing on cost benefits through efficiency, automation, and standardisation
- Provision of **tried and tested procedures and support in optimising** existing internal processes with our own expertise
- Collaboration with **flexible user groups** – not only from the legal department but also from specialist departments
- Use of and expertise in IT solutions for **automation and data management** and continuous improvement of the organisation's own infrastructure
- Flexible cost structure and software use as well as **scalable resources** in the administrative, technical, and legal areas

Depending on the individual application, the focus of legal outsourcing shifts to the area of legal advice, while legal process outsourcing focuses more on structural support. If all this is offered in the external assumption of legal functions, the business and thus also the legal department will not only benefit from the classic outsourcing advantages. Rather, this results in sustainable process improvements as well as targeted innovations in legal and entrepreneurial functions, always in the case of concrete and relevant issues. Legal tech or other technical innovations are thus not introduced as an end in themselves, but always related to the function.

Examples for *Legal Functions as a Service*:

- Data protection management und data protection officer
- Design of standard contracts and contract management as a service
- Corporate housekeeping
- Individual compliance functions
- HR and labour law
- Management of legal and regulatory proceedings