

## How to Get More Value for Money from Outside Counsel?

*On 9 and 16 October 2008, the Belgian Instituut voor Bedrijfsjuristen/Institut des Juristes d'Entreprise organised two debates on "how to get more value for money from outside counsel".*

*Antoine Henry de Frahan and Barend Blondé of FrahanBlondé facilitated the two panel discussions respectively with Dominique Golsong (Goodyear) and Grégoire Jakhian (Loyens & Loeff) and with Dirk Tirez (De Post) and Guy Palmaers (Loyens & Loeff) (Dutch session). The audience consisted of approximately 40 in-house counsels. Here are the main conclusions.*

### **The hourly rate: still alive but not self-sufficient**

Most participants agreed that the hourly rate still constitutes the preferred basis for fee calculation. This is a surprising conclusion, especially given the recent criticism on the hourly rate and its claimed negative impact on outside counsels' efficiency.

Participants indicated that alternative solutions (e.g. fee caps, fixed fees for specific types of files) can be used occasionally, but are inappropriate to offer a fully-fledged alternative for the hourly rate.

Nevertheless, the discussions indisputably demonstrated that a blind application of the hourly rate is inadequate.

To constitute an acceptable basis for fee calculation, the hourly rate must go through various corrective mechanisms, such as prior fee estimates, blended rates, and volume discounts. In addition, the ability of the client and his outside counsel to have open discussions is a key to keep the hourly rate approach satisfying.

*"Meta-communication is key: discussing not just the file, but the way we will work together to manage it."*

Dominique Golsong, Goodyear

Participants agreed indeed that the quality of the relationship between the in-house and the outside counsel truly offers the best counterbalance against the flaws of the hourly rate.

For example, a fee estimate will be nothing but a hotbed for frustrations if its scope is not clarified in advance, if its evolution is not followed up during the file and if overruns only

appear on the invoice. Outside counsel will claim it is impossible to anticipate unexpected circumstances resultant in budget overruns. But the discussions during the sessions showed that the core of the problem is not caused by the unexpected circumstances. It is caused by the lack of open and direct communication about the probability that the initial estimate will be overrun once such unexpected circumstances occur.

Such communication requires a relationship, built on mutual trust and respect. Members of the panel insisted that efficient communication is a shared responsibility and requires efforts from both sides.

### **Adding value to legal services: mind the gap!**

There is an undisputed need for more added value from the in-house counsels side and there is an undisputed willingness to respond to such need from the outside counsels side. The problem is that, in general, in-house and outside counsels don't address these issues with each other, and so poor progress is made.

*"Feedback sessions?  
Yes please!"*

Guy Palmaers, Loyens &  
Loeff

According to the members of the panels, creating or increasing value for money requires an investment in the relationship with the outside counsel. Systems like *relationship partners*, *relationship meetings* and *reciprocal evaluation sessions* can help bridge the gap between in-house and outside counsel and achieve mutual alignment in the value creation process.

But improving the relationship can also be a far more casual effort. It is not (just) about procedures and evaluation systems; it is about the willingness to have a straight and open discussion from time to time. Too much communication paperwork or procedure can even hurt effective communication. This also applies to "beauty parades".

The discussions highlighted that *continuity* of the communication is key. Communication is not something that parties should do just at the beginning of the assignment, or at the end of it: communication channels must remain open and active on an on-going basis.

In short, the message is, "Just talk about it." Both outside counsel and his client would benefit from being more proactive in addressing value issues with each other, which will also result in an upgraded relationship.

*"A benefit for in-house counsel of  
organising tenders is that you must  
reflect on the project first, before  
outsourcing it."*

Dirk Tirez, De Post

### **Technology: evolution, not revolution**

Will information and communication technology (“ICT”) help legal departments get more value for money from outside counsel? In relation to that question, the following main ideas emerged:

- In the long term, progress in ICT is expected to change how in-house and outside counsel work together in the future, but in the short term no major revolution is expected;
- It may often be more cost-effective for legal departments to improve the use of the existing ICT systems already in use in their organisation than to acquire or build from scratch new, expensive systems. In terms of document management systems, database, intranet, e-billing, etc., legal departments can in most cases achieve a lot with the tools already in place in the company;
- ICT solution providers are increasingly focussing the efforts on the legal departments. These have an increasing range of ICT products to choose from, and sophistication is going up. As a result, the pressure on law firms to speed up their own ICT processes and match the standards of their clients, might become acute;
- ICT today still focuses primarily on the internal processes of law firms or in-house departments. Interface between both is the next step. (Some firms and in-house departments have already made it). This raises obvious confidentiality and security issues that the legal sector will have to solve.

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