

# How Legal Departments Should Formulate Their LegalTech Strategy

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LegalTech is hot. And when things get hot, you can easily burn yourself. When providers and consultants shout ‘You have to move now, before it’s too late’, it’s actually time to keep a cool head and think carefully. When it comes to LegalTech<sup>1</sup> investments, there is a substantial risk that rushing would lead legal departments toward the wrong decisions.

## The broadening role of the in-house lawyer will require LegalTech investments

The role of legal departments and in-house lawyers is evolving, and they will not be able to fulfill it without relying more on technology.

The degree of extension of the role of legal varies from one company to another, but the overall trends<sup>2</sup> are clear:

- The scope of legal is broadening into new roles such as compliance, risk, CSR, privacy and public affairs.
- The strategic impact of legal is growing. A growing number of general counsel are members of executive committees and are involved in strategic decision-making.
- The mission of the legal department becomes more proactive. Legal is expected not only to solve legal problems, it but anticipate them.
- However, the resources (FTEs and budgets) of legal departments have not evolved accordingly. In-house lawyers have to do more with the same resources (or slightly more). This forces them to rethink priorities and where to allocate their limited resources. We call this strategic legal sourcing. It is one of the most important challenges for general counsel today.

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<sup>1</sup> We use LegalTech as the combined terminology for all technology-related investments in the legal market. These can either be technology-driven legal services or software tools to improve or facilitate the functioning of legal services providers.

<sup>2</sup> FrahanBlondé, *General Counsel Barometer*, IJB/IJE, 2016.

This is where technology fits in: Legal departments will not be able to fulfil their mission without integrating technology into their sourcing strategy. But a LegalTech strategy can only be successful if it fits within the broader legal sourcing strategy.

## **The LegalTech market remains immature and seller-driven**

These are impetuous times. Legal departments must, therefore, take a step back before making important LegalTech investments with a long-term impact. To explain this, it is important to clarify certain concepts.

### ***Mature markets and immature markets***

In a *mature market*, buyers understand the market and can choose amongst a number of established players who offer tried-and-true products or services. Buyers understand their own needs better than anyone else and are perfectly able to set up a successful purchasing process.

In an *immature market*, buyers do not yet fully understand the market. There can be several reasons: new players entering the market offering new services or products; existing providers drastically changing their offering; or there is an important shift in needs. Products or services are not yet duly tested or tried. There are no clear, established market leaders who serve as a reference for the rest of the market. Buyers hesitate about what their real needs are.

### ***Buyer-driven demand and seller-driven demand***

In a *buyer-driven demand*, the buyer initiates the buying process and reaches out to potential vendors.

In a *seller-driven demand*, the seller inspires buyers to initiate a buying process. If the seller does not take the initiative, none is buying anything. The seller creates the opportunity.

Except maybe for the larger markets such as the US and UK legal markets, the LegalTech market is predominantly an immature and seller-driven market: New players and new services are popping up almost on a daily basis. Buyers, like legal departments, cannot see the wood for the trees. Providers, many of them new to the legal sector, promise efficiency gains, increased security, savings, etc. but many of the available track records are either pumped up or too recent to be strong evidence for success.

The market is also mostly seller-driven: LegalTech providers try to convince legal departments of the added value of their innovative software or services. Although most of these services are connected to real needs of legal departments, it is very hard for legal departments to assess the real value and to distinguish between must-have and nice-to-have services. Today, legal departments feel pressured from the outside to make a LegalTech move. Most of the LegalTech investments by legal departments are triggered by sales initiatives of LegalTech providers.

That makes LegalTech investments risky: Legal departments have difficulties in assessing both the added value ('do we need this?') and the quality ('is it solid?') of the offerings.

## **Defining the LegalTech strategy requires a broader strategic process**

To reduce this risk, legal departments must reverse the buying process: decisions about LegalTech investments should not be an isolated exercise, but the final outcome of a much broader strategic exercise consisting in answering four questions:

- What are the objectives of the company?
- What are the mission and objectives of the legal department?
- What is the sourcing strategy?
- What is the LegalTech strategy?

### ***What are the objectives of the company?***

The ultimate mission of the legal department is to help the company achieve its objectives. General counsel and their teams, therefore, must know and understand these goals and the overall business context in which they operate: marked dynamics, products and services, strategic challenges, etc.

### ***What are the mission and objectives of the legal department?***

The mission and objectives of the legal department should answer the question: how will the legal department contribute to achieve the mission and objectives of the company? Why should general management support and invest in legal?

Highlighting the link between the objectives of the company and the legal department is critical. It is the only sound basis to have a discussion on resources for the legal department. If general management does not see how the legal department will contribute to achieving its objectives, it will be inclined to limit the legal resources to a minimum.

### ***What is the sourcing strategy?***

The sourcing strategy answers the question: Where and how will we deploy our resources given our priorities and given the available resources? More specifically:

- What will we do in-house within the legal department?
- Where will we collaborate with external counsel?
- What will we outsource to third parties?
- What will we push back to the business by developing self-help support tools?
- What will we stop doing?

### ***What is the LegalTech strategy?***

Only when the legal sourcing strategy has been defined, can the legal department make sound LegalTech choices, by answering the question: Where do we need technology to make our internal and external legal sourcing strategy work?

At this stage, the legal department should work with the IT department to assess whether the different options on the table are compatible with the company IT plans, to define the functionalities of the systems to be acquired or developed, and to organize an efficient buying process.

## **Five recommendations when establishing a LegalTech strategy**

### ***Procure sign-off by general management***

LegalTech investments will require budgets. Budgets will require approval. The least effective way for legal departments to obtain them is to ask general management for money. Begging does not work. Legal departments must learn to put up a business case.

The most effective way is to involve general management in the strategic exercise described above and get their sign-off on the mission and objectives of the legal department, as well as on the legal sourcing strategy and the LegalTech strategy. It is much easier to obtain approval on additional budgets if legal departments can show how the legal sourcing strategy will help the company achieve its objectives. The LegalTech budget becomes a part of the broader 'deal' between general management and the legal department on mission, scope, and objectives.

## *Invest in change management*

Lawyers are trained to be the opposite of engineers: look for errors, beware of exceptions, question assumptions, think worst-case scenario, and pay attention to the unique features of every case. For lawyers, these are professional qualities, but it makes it hard for them to switch to volume thinking, risk acceptance, process mapping, and standardization. Most lawyers are conservative, suspicious and ill-trained in the very areas where technology adds most value. Also, most lawyers are not advanced technology users.

LegalTech investments require planning, preparation, discipline, involvement and communication, all of which are crucial and time-consuming. There is no LegalTech that can self-implement.

Change management is critical, but often not sufficiently budgeted in the total LegalTech investment. As in other immature markets, many LegalTech providers do not have the capacity to properly accompany implementation. Additionally, since the market is price-sensitive, they might also be inclined to cut down prices by slashing implementation costs. All these elements make the human factor by far the biggest risk for LegalTech investments.

## *Involve the IT department early in the process*

Inevitably, IT departments have company-wide IT strategies and policies. The specific needs of the legal department are not a driving factor when designing such company-wide policies. Legal is not core to IT, nor should it be (however frustrating this can be).

Therefore, the LegalTech strategy must fit into the broader company's IT strategy. Legal departments often ignore this. They get excited about a new LegalTech solution presented by smart sales representatives and then get into conflict with the IT department which refuses the solution because it does not fit in their overall plans. Discussions drag on for months, everybody loses time and gets frustrated. Here too, legal departments must reverse the process: The IT department should be a partner in establishing a LegalTech strategy as from the outset. Once the strategy is defined, the legal department and IT can jointly reach out to relevant providers.

This can be a time-consuming process. The IT department does not usually grasp the needs and specifics of the legal department. Lots of time must be spent to ensure mutual understanding. But involving IT early in the process will save time and frustration later.

### *The small steps strategy might be the best strategy*

In the current LegalTech market, the first-mover risk is substantial. In the next few years, many new providers and systems will enter the legal market. Making big investment decisions now might be too early.

Waiting, however is not an option. Instead of betting on the big leap forward, Legal departments can opt for the small steps strategy. First thing is to take steps to prepare the legal department and make it more tech savvy (training, informing, testing, demonstrating,...). Investing in LegalTech solutions addressing only one specific problem instead of all the needs at once, might also be a smart move.

### *Join forces with other legal departments (or at least share best practices)*

When it comes to LegalTech, legal departments have a lot in common and should join forces, at least for two good reasons:

- Many legal departments lack the internal resources to conduct the strategic process set out in this article. Sharing information, methodologies, documentation, and experiences, could save a lot of time and money.
- Many LegalTech solutions are not yet fully customized to the needs of legal departments. Jointly, legal departments could put more pressure on providers to adapt their products and services.

## Summary

- The role of legal departments is broadening. However, their resources are not increasing proportionally. Legal departments will not be able to fulfil their mission in the future without incorporating technology in their sourcing strategy.
- The LegalTech market is still immature and seller-driven. LegalTech investments are risky because legal departments have difficulties in assessing both the added value and the quality of the offerings.
- Decisions to invest in LegalTech should be the result of a broader strategic exercise centered on defining the legal department's sourcing strategy.
- The following recommendations will help legal departments to establish a solid LegalTech strategy:
  - Ensure that the LegalTech budget is part of the broader 'deal' between general management and the legal department on mission, scope and objectives.
  - Invest in change management.
  - Involve the IT department early on.
  - Do not exclude the small steps strategy
  - Join forces and share best practices with other legal departments.