

Outsourcing

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The initial analyses of the economic crisis indicated that outsourcing would increase significantly as businesses rushed to save costs. However, this prediction has proven to be false in the Netherlands. In the current economy, cash is king and therefore all forms of costs are placed under heavy scrutiny. The long-term cost savings to be generated by outsourcing simply do not weigh up against the immediate costs.

It is, however, very much the question as to whether costs should be the primary driver behind any outsourcing. Risk management is a more valid litmus test, assessing a company's internal ability to provide the necessary levels of functionality (now and in the future) against the alternatives available on the market. A good example of this risk-oriented approach is an airport that had a large department responsible for a range of non-core activities, all of which happened to be heavily-regulated in the Netherlands. The risk of regulatory non-compliance was deemed to overshadow any benefit of maintaining these activities in-house and therefore led to the decision to outsource. Kennedy Van der Laan advised the airport in its outsourcing of these activities to a consortium of parties specialised in each of these regulatory areas.

The distinction between core and non-core activities is also driving the emergence of integrated facility services (FS) as a field of outsourcing. FS is the bundling of various non-core activities such as catering, cleaning and security into an integrated package to be managed by a single provider. Since it is virtually impossible to define the term facility services, as this can encompass activities as diverse as grounds maintenance to the printing of internal newsletters, providers can therefore also range

from caterers to construction companies or cleaning crews to security firms. The key legal issue however is always the same: how to ensure that business-critical processes will continue without interruption, despite the outsourcing. The answer lies in a thorough understanding of those business processes and how they impact each other.

Kennedy Van der Laan prides itself on its knowledge of the real world impact of outsourcing and utter pragmatism. The combination enables us to achieve the best possible negotiated result in a quick and cost-efficient manner. One approach we favour for businesses seeking to outsource an activity is the use of simultaneous negotiations. That is to say, two to three providers are short-listed and each required to engage in parallel negotiations with the customer. This competitive setting has enabled us to generate price savings for the client well in excess of our legal fees.

The short-term win however must be balanced off against the long-term cost. One such cost typical for the Netherlands is in the relations between management and the works council of the company seeking to outsource an activity. A successful outsourcing transaction demands expertise in a wide number of areas such as co-governance, corporate, contracting, IPR and employment law, all of which are available at Kennedy Van der Laan.