Legal In-house Process Landscape

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Executive Overview

Legal functions[1] have long been led with a purely legal focus, with a non-managerial mindset. Instead, they have typically been treated as a counselling function, a guardian of the law, usually as a cost centre with a "cost of doing business" approach. In the past, legal functions were rarely led in a digitalised, operationally efficient way. Changing that mindset is difficult for a profession that tends to be conservative,[2] has previously seen little value in managerial approaches and thus is traditionally reluctant to spend time and energy on its functional management development.

A new generation of lawyers,[3] young *and* seasoned professionals, are now pushing the profession ahead, requesting smart solutions for delivering legal services, technological support and data-based decision making—to name just a few demands.

And here, the Legal In-house Process Landscape project comes into play. With

our series of publications, we seek to adopt learnings from management of other enabling functions for the in-house legal function. This publication outlines our plan to identify, define, and describe legal in-house processes as the basis for a more efficient, effective legal business management. This approach enables the legal in-house function to define the management capabilities it needs to serve its in-house clients and the enterprise best, use the processes to create its data model of its own activities. Only then can it define the required technological support and platform it needs.

By choosing this approach, we aspire to deliver a hands-on methodology which can be understood even before diving into legal business process design or legal business management operations. It helps to move away from dealing with isolated IT solutions for a single identified legal business management problem. Often legal functions start with a project to select and implement a software that helps with merely one issue,[4] only to discover other functional or in-house client needs and interdependencies along the way. Naturally,

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1   Legal functions for the purposes of this paper comprise all departments in the enterprise which deliver legal services in the broadest sense. Besides the legal department, this includes compliance, data privacy, export and trade control functions, labour law, procurement contracting, for example.

2   Cf. the recent study by Alexander Frühmann, "Requiem and Epilogue for the Legal Profession", executive master thesis, Fontainebleau, August 2020. It also seems that lawyers tend to be more averse to change than other professions, as psychologist and lawyer Dr. Larry Richard found, cf. https://ogletree.com/insights/can-risk-averse-lawyers-learn-to-embrace-change-an-interview-with-dr-larry-richard/, last accessed 21 January 2021 .

3   "What is a lawyer?" The Bionic Lawyer Project provides a much needed, broadly inclusive approach combinig all (!) disciplines, working in, for and about the legal industry. Such definition is truly helpful in finally overcoming the much-dreaded differentiation between "lawyers", i.e. attorneys, and so-called "non-lawyers", all those other highly skilled professionals working with them. As the Bionic Lawyer Project publication charmingly puts it: "These wonderful people, are all lawyers". Cf. the definition set forth by "The Bionic Lawyer", chapter 2 of a serial publication of 16 so-called "levers" to develop the legal profession, the early chapters are available in The Bionic Lawyer Project LinkedIn group, https://www.linkedin.com/groups/8807267/, the concrete chapter is directly via the post https://www.linkedin.com/feed/update/urn:li:activity:6720347181338910721, both last accessed 10 January 2021.

the Legal In-house Process Landscape provides a generic framework for process design with the need to then reflect the individual circumstances of any enterprise.

A clear Legal In-house Process Landscape is essential to manage interfaces with the business and be a part of its processes. Otherwise, the legal function will inevitably be driven by the necessities of other departments in the digitisation process. Defining the legal function's own functional processes is nevertheless only one building block for changing the in-house legal function, but one which constitutes the foundation of a modernised legal in-house function.[5] As a desired or even intended "side effect", this facilitates the legal function's business partnering. Clear interfaces lay the basis to concretely describe the value legal work brings to the benefit of the business' overall operations.

Introduction

Digitalisation, optimisation and standardisation of legal work, efficiency, integration with the business—whatever goals one tries to achieve, they all call for the same basic requirement: a clear and transparent procedural setup. In particular, the implementation or use of IT solutions and effective digitalisation of legal work require a documented and optimised process landscape. Otherwise, long cemented process errors or inefficiencies will be transported to a new digital environment and will frustrate the efforts undertaken. Digitising a flawed process will only multiply inefficiencies—and is a main reason why digitisation projects fail.[6] To obtain a clear and transparent procedural setup, we require an in-depth analysis of the ongoing work.[7]

An important insight into collecting, sorting and then describing these work processes in detail is attributed to an early pioneer of quality management and productivity methods, William Edwards Deming:

" *If you cannot describe* "
what you are doing as process,
then you don't know what you are doing.

Related relevant frameworks

Our concept is by no means the only one relating to the improvement of daily legal work in companies. In the legal field, two major frameworks in particular are prominent:

The ACC Maturity Model for the Operations of a Legal Department focusses on exemplary processes typically found in today's legal functions (including but not limited to legal operations) and their maturity in the categories of early stage, intermediate, advanced. The model does not interrelate the processes, instead it helps to evaluate them separately.

The CLOC Core 12 describes twelve "functional areas" of activities that support work in legal functions (which are usually the primary focus of Legal Operations departments). It focuses on which levers produce the quickest gains in improvement, which makes it useful in many settings, while it does not describe the legal content and its relation to the areas.

Both models relate to types of processes empirically found in legal functions, describing, staging and improving them. The Legal In-house Process Landscape seeks to start from an abstract model which then enables us to define, link and embed all legal processes in the overall operations of the enterprise. This path is not designed to replace the CLOC and ACC models but is instead complementary. Our approach seeks to build the basis and be adaptable to future legal and business developments while—in the coming publications—providing an easy-to-use methodology for adaption. When new laws, business models or ways of operating emerge, they can be integrated into the Legal In-house Process Landscape in the true sense of the word—without creating new silos or losing efficiencies, synergies of standardised process design or requiring a renewed start.

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4   Legal entity, contract or document management software, for example, are all important tools, but may not be the first ones to serve the in-house client needs and which could very well fulfil other functions' needs such as procurement, HR, general administration or business development.

5   Other building blocks are, for example, conscious new ways of collaboration; using new tools to arrive at legal solutions which generate true customer value and, last but not least, enabling lawyers to focus on business' needs and the corresponding challenges. The publication of The Bionic Lawyer Project calls them "gold box problems" and outlines them as bearing one or more of the following characteristics: complex, multifaceted and ambiguous; or unpredictable and uncertain, rapidly changing or chaotically decaying and impacted by irrationality, emotion, dishonesty and bias.

6   Bill Gates: "*The first rule of any technology is that automation applied to an efficient operation will magnify the efficiency. The second is that automation applied to an inefficient operation will magnify the inefficiency.*", cited according to Jeston, J., Nelis, K., Business Process Management—Practical Guidelines to Successful Implementations (Routledge, 3rd ed. 2014), Sec. 66, page 49 et seq.

In this paper, we outline a generalised classification of legal in-house processes and provide a first overview on how to analyse their landscape in a systematic way. This analysis then leads to a process backbone for legal content and its delivery.

Why do we believe this approach is needed?

A key motivator for our approach is **reaching defined standards and corresponding quality**. Both will drive efficiency and improve effectiveness of in-house legal work as they enable digitalization and business integration. Nota Bene: this reaches farther than moving paper-based work to a digitised way of working. We **seek to strengthen the impact of legal work in a digitised business environment**. In a complex matured organisation, defined standards and quality ease the work for everybody involved. Interfaces to other backbone or business functions will be clearer and frictions reduced. Synergies can surface and commodity work can be allocated to the right level of qualified personnel, freeing capacity for increasing workloads and collaboration with business partners in particular on more complex issues.

As a prerequisite to this, the **legal functions must define its own internal processes**. In order to seamlessly connect to various business processes with different necessities, the legal function needs such a structured and digital-ready basis. The digitalisation of business functions will lead to increasing pace and data streams which cannot be compensated for by conventional methods like adding extra capacity—be it sourced internally or from external providers. A strong process backbone structure enables the legal function to play an active role in this emerging situation for the benefit of its own service delivery capabilities.

As a consequence, the legal in-house functions can:
- demonstrate a consistent economic rationale for its own services,
- provide efficient and effective interfaces between the legal function and digital business processes,
- agree to metrics and KPIs allowing for fact-based budget discussions,
- argue budget needs for IT infrastructure and functional digitisation and then
- better prove its day-to-day value beyond major transactions, litigation and firefighting.

For this purpose, a clear In-house Legal Process Landscape ensures that relevant to dos become transparent. With this publication, we provide a basic methodology for legal functions and reduce barriers for legal in-house process projects. In subsequent publications, we shall set out our methodology in greater detail.

So, what is our initial thinking?

When attempting to describe and categorise the work of a legal functions or—to be more precise—the work of all functions providing legal services, we start with their fundamental raison d'être: ensuring legal governance throughout an organisation, securing appropriate advice to it and defending it against external threats. When talking about legal in-house processes, our concept therefore covers a broad legal spectrum and includes compliance, export control, privacy, specific regulatory topics and other law-related issues an organisation might face. In addition, we would like to apply the continuous improvement methodology of business process management to the in-house legal field. Once the initial process backbone is defined, we believe our concept will enable legal functions not only to generate the benefits described above, but also to drive incremental change more easily, while maintaining the backbone as a frame.

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7   Also, when thinking about the next steps of legal analysis, data-based analysis, only well-documented and structured in-house processes can be a basis for long-term data gathering and analysis. To bring a digital process to the next level, only a deep, legal-minded and data-based analysis, can unveil the potential. Such analysis requires structured and well-documented processes, as only they allow the reliable gathering of data points over time.

Governance, Advice and Defence:
The Functional Areas of Legal In-house Work

A legal function delivers its services by providing governance, advice, and defence in a steady, dynamic flow to the business. We call them the "**Functional Areas**" of legal work:

- **Governance:** Whenever the legal function defines internal policy standards, rules and frameworks of conduct, it provides Governance. The trigger for Governance activities can be the law as such, risk management requirements, audit findings or simply the legal function's own judgement. Its main objective is to identify or assess risks, operationalise and then implement risk mitigation and monitor compliance. In the field of governance, the legal function is often the owner of the respective processes.

- **Advice** includes activities that enable the business to drive its activities by shaping the legal situation, which often consists of drafting documents, transferring legal knowledge, performing or assisting in decision-making. Depending on the maturity of the in-house function, advice is given proactively or (only) upon demand. Activities within this Functional Area can support either other business functions or further legal stakeholders, who for example require specialised legal input.

- **Defence** consists of minimising liability and accountability, as well as all activities that address the defence of threatened legal positions. Defence can also encompass activities triggered to make claims and push for a broader legal or superior business position. Activities in this Functional Area can be proactively driven by legal, upon internal request or reactive based on external triggers.

Functional Areas of in-house legal work

Governance   Advice   Defence
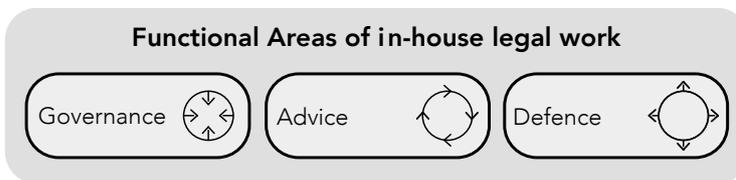
These Functional Areas encompass many different types of tasks and activities.[8] The following list provides typical examples meant to illustrate the Functional Areas, but is clearly not comprehensive:

- Gathering, understanding and classifying facts of business challenges
- Finding or creating legally enabling, sound solutions based on these established facts
- Defining and aligning general guidelines for compliant business conduct
- Setting up legal compliance management systems, corresponding approvals, monitoring and KPIs, conducting investigations and providing documentation
- Seeking business opportunities using claims or pushing back on legal threats
- Supporting internal business partners in negotiating and concluding long-term or complex agreements
- Developing legal standards to be used by the legal function or other enabling functions in forms and templates and maintaining them throughout their life cycle (e.g., standard contracts)
- Monitoring IP rights and providing immediate legal support if there are infringements
- Managing outside counsel and legal spending

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8   Several of these activities are reflected in existing models dealing with the efficiency of legal work. For example, the CLOC Core 12 describes support and management activities needed in regard to many of these activities. The ACC maturity model classifies many such existing processes in terms of a process-specific maturity classification. In a later publication, we plan to provide a generic maturity measurement for legal processes, which is especially useful where no process specific metrics exist.

- Internal staffing for business projects and legal tasks
- Building a digital infrastructure for legal tech solutions

Based on this classification, we can **assign some typical tasks to these three Functional Areas**:

	Governance	Advice	Defence
Defining and aligning general guidelines for business conduct	X		
Setting up legal compliance management systems, corresponding reviews, approvals, monitoring, investigation and documentation	X		
Creating a playbook for purchasing or sales contracts	X	X	
In preparation of a project's contract: Gathering, understanding facts of a project's business challenges		X	
Setting out limits of authority for signature/contracting	X		
Seeking business opportunities using claims			X
Pushing back on legal threats including civil litigation and administrative proceedings			X
Monitoring IP rights and providing immediate legal support if there are infringements			X
Supporting internal business partners in negotiating and concluding long-term agreements		X	(X)
Developing legal standards to be used by the legal function in forms and templates and maintaining them throughout their life cycle (e.g. standard contracts)		X	
Automation of contracts for every-day use to increase efficiency in the legal function		X	

No matter how we arrived at these activities, by clustering and sorting what is already an obvious process or by seeking to identify a less apparent process, all of the activities in the Functional Areas are typically recurring courses of action. They can be structured as a distinct set of steps in

- a series of tasks or activities,
- undertaken by people or technology,
- structured by a defined sequence,[9]
- often involving decision points,
- to produce a specified outcome or goal,
- for a particular customer (e.g., in-house client) or costumer group.

These recurring courses of actions are the processes of legal in-house work.

Now, when it comes to a Legal In-house Process Landscape, **we believe it helps to understand legal in-house work as a business process like any other**. Quite contrary to process managers, however, legal professionals tend to sort activities (as well as documents and knowledge) along the lines of familiar legal content (corporate law, contract law, labour law, etc.). This legal-methodical approach may be easy to digest for legal professionals but it does not reflect the reality of the business world. Our landscape connects such

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9   Or sometimes a not yet defined sequence when the process is still chaotic "in the making". Quite often it is the legal professional who helps to sort out the process, in order to be more efficient next time around. Who has not written down (and revised regularly) a "list of functions to be involved" for complex contracts to be drafted and reviewed by numerous expert functions?

legal knowledge to process management, including an identification and subsequent description of processes.

The legal and business implications of a certain process provide the basis for defining the required goal, that is a process' output. By contrast, to set out the legal processes in itself and in its relation to the organisation, the starting points ("trigger") and process structure must be defined according to the workflow of the undertaken activities. Legal process modelling is not legal knowledge management.

How can we describe a process?

In order to describe a process, one is inclined to ask—where does the work come from, where does a process begin? The vast majority of legal in-house work starts with a business need, the process' start is often outside of the legal function. This connects legal processes to business processes, both of which can be described using established business process management methodology.

In general, every business process[10] has the same **essential elements**:[11]
- a starting point, or "trigger event",
- a goal the process is designed to achieve (i.e., the desired business outcome),
- data input and data output,[12] usually in each individual process step,
- a process owner and process participants (within the legal function or elsewhere in the organisation),
- process objects to support or to be created during the process (e.g. legal documents or verbal guidance of any nature) and
- variables to trigger different variations of the process.

Each **description of a legal in-house process** needs to contain these elements.

How to come to an in-house legal processes landscape then?

Since the goal is to serve the in-house clients, foster integration of legal work into business processes and then (using or building) the IT landscape, an in-house legal function should focus on the Functional Areas introduced above: Governance, Advice and Defence. Start with a shared understanding and approach. Then relate them to the relevant process and its elements.

When clustering the tasks of the legal function to describe a process landscape, once again, business process management methodology is helpful and defines three types of processes in an organisation:[13]

- **Functional Management** processes for the strategy, planning, monitoring and controlling of core and support processes of the legal function;

- **Core processes** directly contributing to the creation of a legal product or service according to the organisation's purpose (also known as "value-creating processes") and

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10   In order to define a process, the known functional task involving the legal function needs to be decomposed into its fragments and then, recomposed in a standardised order. We will go more into detail in the subsequent Legal In-house Processes publication alluded to above.

11   While the defining elements of a process might differ in detail depending on the authors, the core is clear. As an example, Dumas, M. et al, Fundamentals of Business Process Management (Springer 2013), sec. 1.5 describe a process as "a collection of events, activities and decisions that collectively lead to an outcome that brings value […]". Similarly, Stöger, R., Prozessmanagement – Kundennutzen, Produktivität, Agilität (Schäffer-Poeschel 2018), p. 6, defines a process as a „"sequence of activities with a result, an information and control component" (translation by the authors of this paper). While we agree with the notion that a process should bring value, in our view, this is beyond the scope of the definition: While it is sufficient for a process to bring an output to fall within the definition, a good process should bring meaningful output, that is, value for the recipient of the process' results.

12   Here, we refer to data in the broadest sense: if an in-house lawyer collects facts in order to deliver a legal analysis and advice across multiple functions, he or she is gathering data input and producing data output.

13   There are several variations of this definition, however, for our purposes we rely on this straight-forward representation, which is an extension of the categorisation going back to Michael Porter's Value Chain model (see Dumas, M. et al, p. 35, box Categories of processes according to Porter).

- **Support processes** enabling efficient and high-quality execution of core processes without direct contact to the beneficiary of the core processes (in our case, the business units).

Three Clusters of Legal In-house Processes

Considering the special characteristics of the legal function in an organisation, this approach enables us to structure the activities and tasks of the legal function as follows (we shall call them the "Three Clusters"):[14]

- **Functional Management Processes** are managerial processes required for running the legal function on a day-to-day basis, including long-term strategic processes (e.g. financial goals, digitalisation roadmap, spend management, organisational setup);

- **Core Legal Processes** provide services to the business to foster and deliver the goals of the enterprise; incl. providing stable governance and compliance guidelines, defending the enterprise against external and internal threats and seeking to expand the legal or business position by making claims; and

- **Legal Support Processes** enable efficient and high-quality core legal processes, for example by generating meaningful, standardised content, staffing, knowledge management, document management.
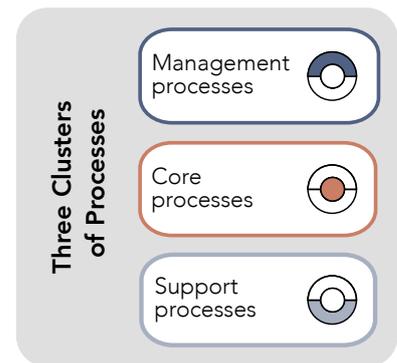
These Three Clusters of Legal In-House processes group all tasks and activities of the legal function as depicted in the Functional Areas Governance, Advice and Defence. The legal function cannot be successful without equally providing for each of the Three Clusters. While each Cluster has a very different focus, they are all necessary elements leading to excellence in legal in-house service delivery.

Matching tasks and activities to the Three Clusters

Any tasks and activities of a legal function, be they in the Governance, Advice or Defence Functional Area, can be allotted to one of the Three Clusters of In-house Processes described above. Any activity either directly and immediately serves the purpose of the legal function (Core Legal Processes), seeks to support the Core Legal Processes on a content-related or process-related basis (Legal Support Processes) or is non-legal work required for the general management of the legal function (Functional Management Processes).

In this regard **legal work is no different from other functions in the organisation**. Just because a process once defined requires ownership, expertise and nowadays usually IT systems to run it, a legal function should not shy away from capturing it.

We consider it part of a legal function's housekeeping to **take stock of processes and existing standards**. This should be done before setting out to define new standards, defining interfaces and collaboration standards with business units, operational legal IT or a comprehensive digitalization initiative with the aim of further integrating into the business process.

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14   Please note that these clusters similarly exist on different granularity layers: a company will have core processes supplying their customer with valued products or services and support processes such as legal support. The legal function can be viewed on an organisation on its own, with the goal of delivering maximum value to its parent organisation as its (only) customer. Then, the actual legal service becomes the core (legal) process, whereas more granular other processes can be viewed as the support and functional management processes. That is, the three types describe a pattern that recur on different levels of detail in an organisation—the more you zoom in, the more specific value of core processes you will find, and the more detailed support and management processes will be given.

Before starting a new project (be it IT, integration into business or internal optimisation), **running a simplification clean up phase** and then deciding on a strategic way forward regarding resource allocation, tech tools or a systematic step by step digitalisation is key. Skipping this process will—almost certainly—result in subsequent changes in the project scope leading to missing deadlines, run-away costs and, ultimately, unsatisfactory results.

By adopting the Three Cluster Legal In-house Process perspectives for the Functional Areas of legal work (Governance, Advice and Defence), their typical courses of action (such as standard setting, consultancy, approval, strategy development) can be used wherever helpful, as they become part of the tool set. This leads to a clear overview of the process clusters, into which common activities from the Functional Areas can be grouped:

	Functional Management Process	Legal Core Process	Legal Support Process
General guidelines for compliant business conduct		X	
Gathering, understanding facts of business challenges to find legally enabling, sound solutions		X	
Legal compliance management systems setup, incl. approval, monitoring, investigation, documentation		X	
Seeking business opportunities using claims or pushing back on legal threats		X	
Supporting internal business partners in negotiating and concluding long-term agreements		X	
Setting and maintaining Legal standards, e.g. forms and templates (e.g. standard contracts)			X
Monitoring IP rights		X	(X)
Managing legal spend (e.g. billing guidelines, time tracking, establishing a panel)	X		
Selecting external counsel			X
Internal staffing for business projects and legal tasks			X
Setting requirements & digital infrastructure providers	X		
Implementing legal tech solutions			X
Automation of contracts for every-day use to increase efficiency in the legal function			X
Developing a specific software solution with legal functionality that a business function needs		X	

The Concept Result: The Legal In-house Processes Landscape

Having structured the activities of the Legal In-House function in this way, an organisation could take a first step to optimise its internal service delivery model. It can now analyse which activities are crucial for the execution of the Functional Areas, which content-related supporting functions are required and how the function itself is managed. Missing or redundant activities can also be identified. On this basis, the organisation can optimise and, ultimately, integrate or digitise the status quo processes and allocate resources appropriately.[15]

However, the Three Clusters only provide one dimension of the analysis, i.e., a functional view of the In-house legal function. This functional view, of course, stands next to the three Functional Areas of the Legal In-House Function. The two dimensions can be folded into a comprehensive Legal In-house Process Landscape by combining them. Governance, Advice and Defence transposed with the Three Clusters of Legal In-House Process unveil the In-house Legal Process Landscape which can now serve as framework for taking stock and defining a way forward as every activity has a place in this landscape.
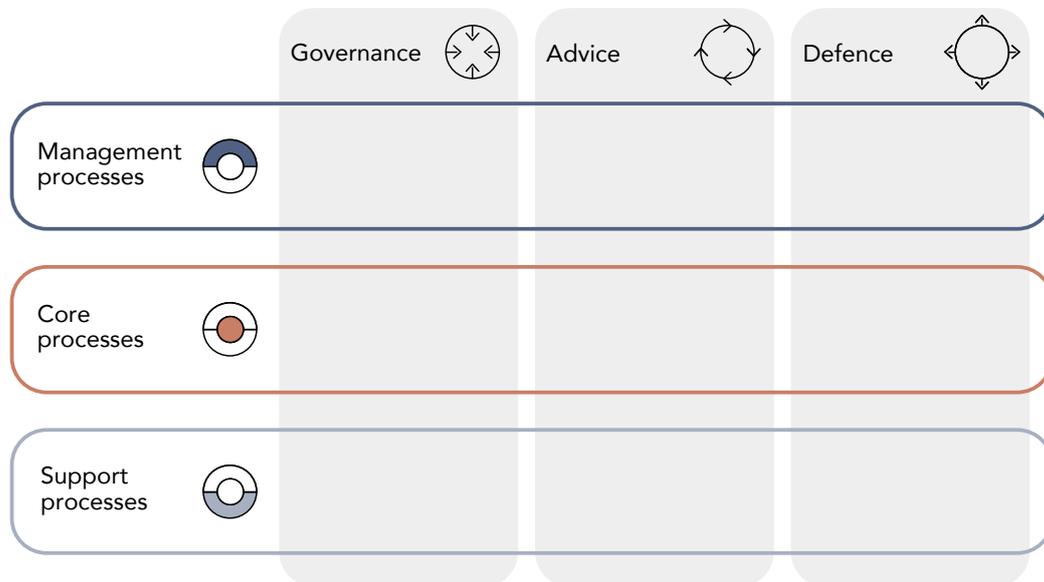
This comprehensive landscape provides several advantages:

*   The specific requirements of each Functional Area can be identified and realised.
*   Joint processes of each Functional Area can be identified and harmonised.
*   Intersections and overlaps of the Functional Areas can be consolidated.
*   Each Functional Area can develop individual processes while recognising their location in the entire legal function.

The landscape can encompass all the data points to be defined and serves various purposes:

*   Defining the status quo of current workflows in the legal function;
*   Serving as a basis for optimising existing and establishing new processes, while showing interactions and interdependencies between Functional Areas;
*   Implementing standards for each aspect of the matrix;

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15   Creating a big picture of all relevant processes, an alignment of goals and clearly setting the scope of the individual processes is crucial for the overall project. See, for example, Sharp & McDermott, Workflow Modelling Tools for Process Improvement and Applications Development, Second Edition, Chapter 5, Discover Business Processes, Process Discovery—What, Why, and How.

- Establishing a common basis for ongoing improvement and development; and
- Defining an in-house legal data strategy.

In the next sequel of this LLI paper, we will provide a general project plan on how to get started and benefit from the structure provided by the Legal In-house Process Landscape.

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