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IN-HOUSE LEGAL DEPARTMENTS: NEXT DESTINATION

From naysayers and operations-stoppers to critical advisors necessary to move the business forward. From mere internal compliance officers to strategic corporate counsellors and managers of external legal services. From papers-all-over to tech-savvy. From impenetrable “black box” to sharer of knowledge to all company employees. This is the quintessence of the in-house legal department’s recent evolution.

The ideal in-house legal department is no longer focused on general duties related to offering legal advice, ensuring legal compliance, and providing board of directors’ secretarial duties. While the above roles cannot go away or be diminished in importance, they certainly have been expanded, as demands and the “rules of the game” in the legal industry and in business in general have changed.

“We also face a shift in the role of the in-house legal department, from the consultants of old to entrepreneurs.”

In big companies, the responsibilities that fall into the gray area between business management and practicing law are

being pushed into legal operations. And this is only the beginning, in an ever-changing business environment that constantly challenges the traditional legal department and “classic” professionals. We also face a shift in the role of the in-house legal department, from the consultants of old to entrepreneurs.

“They have participated in building technology to enable legal workflow automation. Also, they made the choosing and implementing of the right software applications to ensure mobility and security of the staggering amount of data and metadata within a legal department a priority.”

It is a fact that legal departments will face more pressure to realize efficiencies, which will require a keen focus on driving greater productivity. From being smart on how and when to divide responsibilities with an outside counsel to acknowledging that technology is a crucial component of departments’ activity, in-house departments have to navigate between adapting to cost pressures and meeting shorter delivery deadlines.



In-house counsels have become better positioned to take on the role external counsels may have previously been responsible for. The relative mix of inside and outside legal resources has changed over the years. Many companies have brought in-house much of the work typically done by law firms or external business counsels, trusting their in-house teams more and more. This emphasizes the rise of the in-house counsel from a position of inferiority in the legal profession to one of the highest significance.

The existence of a growing body of competitive outside lawyers has presented a continuing challenge to inside counsel. But let's face it; an in-house legal team is more cost-effective than an external firm and it can deliver equally business-critical legal services, especially as it is more

knowledgeable about the industry, business operations, and strategy than outside counsel. So my money will always be on the internal legal department.

In the face of all of this, general counsels are becoming tech-savvy, as there is undoubtedly a role for technology to play in all departments' activity. They have participated in building technology to enable legal workflow automation. Also, they made the choosing and implementing of the right software applications to ensure mobility and security of the staggering amount of data and metadata within a legal department a priority. Nowadays, the existence of security incident response protocols is a must in legal departments, which have acknowledged that proactive cybersecurity readiness is no longer the exclusive purview of the IT department.

In light of the current emphasis on policies related to corporate governance, ethical behavior, anti-bribery, and zero tolerance for corruption, in-house legal departments will continue to refine and expand their mission statements and strategic plans. Good corporate governance is key to raising efficiency and ensuring business sustainability. Still, getting companies to move from commitments to compliance is not an easy task for legal departments.

“You are bound to fail when you keep doing the same things you always have, hoping that by ignoring change you can make it go away.”

Although struggling with a complex and evolving regulatory environment, business pressure, competitive external law firms, and technology take-over, failure is not an option for the in-house legal departments, not even in terms of work-life balance. You are bound to fail when you keep doing the same things you always have, hoping that by ignoring change you can make it go away. So set yourselves apart from the crowd, be flexible, constantly reinvent yourselves, work smarter – not necessarily harder or longer – and you should deal well with this evolving role. After all, doing the same thing over and over again and expecting a different result is the definition of insanity.

It is not an easy time to be an in-house counsel, especially when you constantly need to do more with less. But the challenges sure make it more appealing to those who like to test their mental toughness. Are you up to it? Oh, I almost forgot the tip of the day: Drinking significant amounts of coffee helps you stay on top of things.

Dana Ionescu
Legal & Global Mobility Manager at Adecco

EVOLVING ROLE OF THE GENERAL COUNSEL: DESTINATION UNKNOWN



The phenomenon of globalization has impacted almost every field of personal and business life of this generation – and the position of Head of Legal is no exception. In order to understand the evolution of this role compare what football or basketball looked like 30 years ago to what they look like now: Almost like different games.

We ask ourselves how can it have been so slow, why does the forward player not participate in defence and why the defenders do not run to forward positions, and so on.

“The financial crisis and growth of cross-border business resulted in over-regulation and more complex models of business.”



During this past challenging decade the role of the General Counsel has moved also, and is now almost impossible to compare with what was accepted as standard before. In the past in-house legal advisers dealt only with sets of questions from the legal side only, while a combined legal–business outlook on issues is now required. In simplified terms, this means that the commercial side of the coin should be combined with regulatory and legal risk awareness. To be successful, in-house lawyers must have a high degree of legal knowledge and vast business experience to help the company define its corporate objectives and long term strategy.

Multiple factors initiated this change of role. The financial crisis and the growth of cross-border business resulted in overregulation and more complex models of business. The global economic crisis changed how businesses are operated and how decision making processes are structured. The need to minimize costs added additional pressure on spending and consequently affected the amount and kind of external legal support available. Further, managing contracts and litigation risks meant that many more corporate (*i.e.*, not simply legal) problems reach General Counsel than

they did before the crises. And finally, digital strategies and tech-related risks – now prominent in all industrial development plans – now play a much more significant role than in the past.

“Management expects in-house lawyers to be up to date with new regulations – and, ideally, to possess a sixth sense on how and where regulations are going to be changed in the future.”

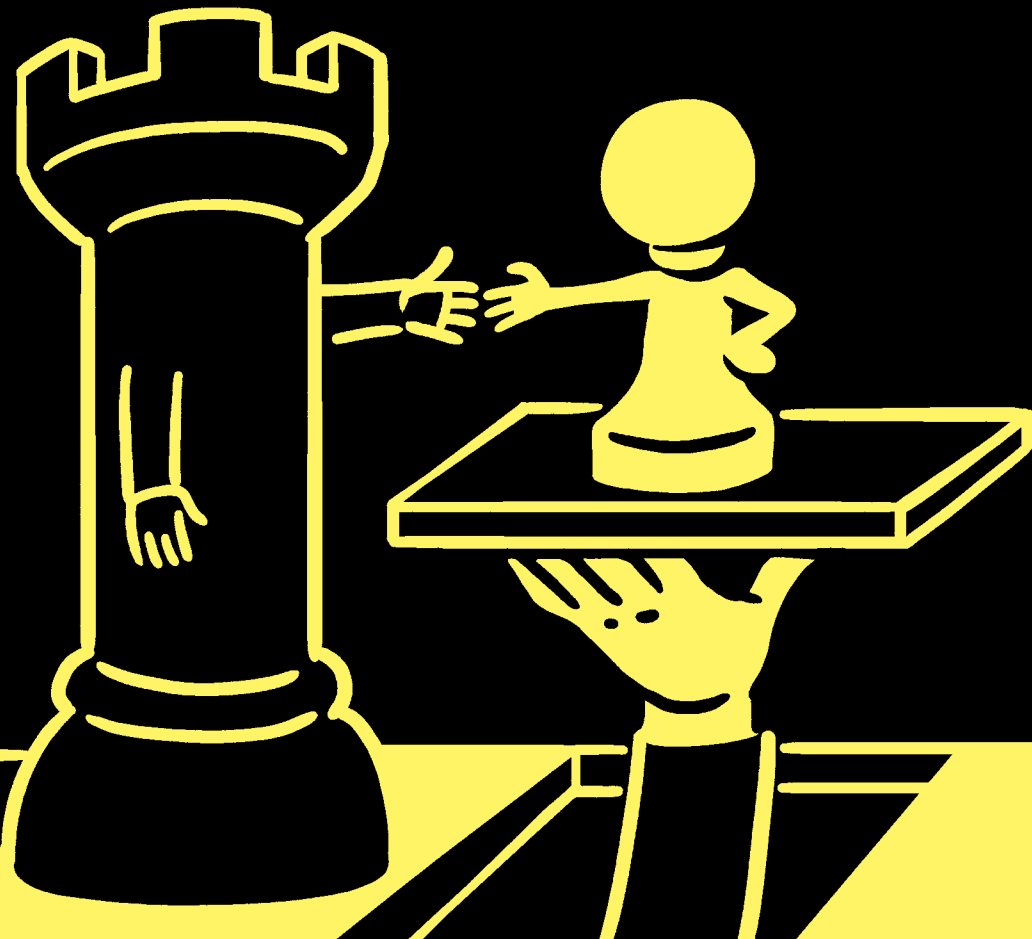
As the increasing number of regulations means a correspondingly increased threat of regulatory fines, and the risks related to litigation rise, the importance of the in-house team has never been greater. Management expects in-house lawyers to be up to date with new regulations – and, ideally, to possess a sixth sense on how and where regulations are going to be changed in the future – so companies can prepare and achieve competitive advantage. Prioritizing which regulations are most significant and pose the most risk, in this overregulated environment, combined with the multi-jurisdictional nature of many businesses, becomes a great challenge for General Counsel. The General Counsel’s task is impossible without a high level of support and trust not only from senior management within the company but also with regulators, government bodies, and other market participants.

The General Counsel’s traditional core role in dispute resolution has experienced an evolution too, as a high level of strategic planning and approach to the process is needed. Risks should be considered proactively in order to avoid the high expense and inconveniences of disputes. Here as well the company relies on the General Counsel to look over the horizon and to anticipate the unexpected. Ensuring a proper information flow to the General Counsel and his/her substantial level of business knowledge, emotional intelligence, and previous experience are keys to success. Here the change is obvious; unlike the traditional structure, where the in-house team were alerted and involved only once disputes arose, General Counsels and their teams should now be included in discussions from the very beginning.

Additionally, the role of General Counsel in contract management is very important considering the ability of General Counsel to highlight potential problems which may appear during the lifetime of the agreement as circumstances change. In order to be on top of this task General Counsel must be aware of not only legal issues but also of commercial concerns related to the contract. In order to meet

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expectations, General Counsel must have both a deep understanding of the business but also the ability to explain to colleagues who are not lawyers what legal concerns may arise from the day to day operation of the contract. Also, a good relationship and clear communication line between General Counsel and colleagues from business helps in building the trust that is key to the early identification of problems and the ability to avoid their escalation. If we compare and track the evolution of the General Counsel role we can clearly see that additional responsibilities have been added: Proximity to the business and much greater familiarity with the company's business and objectives.

“Doing more with less is becoming the mantra of the post-crisis business environment, and control of legal costs is no exception.”

Doing more with less is becoming the mantra of the post-crisis business environment, and control of legal costs is no exception. The focus is very much on cost reduction, including of course external fees, and creating an in-house team that can manage an increasing volume and complexity of work is important. As previously expressed, the enlarged scope of the activities expected from the General Counsel can only be produced by a strong and efficient team. To reduce costs in-house legal teams must now deal with legal matters previously handled by outside counsels. A first-class in-house team must be staffed with experienced lawyers who have a high level of understanding of the company's objectives and are able to recognize the appropriate routes to achieve them. If such a team exists, outside legal costs can be controlled while the quality of rendered services remains the same. To achieve this, time is of the essence, because proper planning and succession must be introduced.

Digitalization and various tech futures are tremendously transforming business nowadays. Depending on the company's business model and strategy new hi-tech solutions are introduced almost weekly to increase revenues, improve customer experience, and manage operational risk. In the legal area tools for contract generation, search engines that provide answers to FAQ, dispute databases, and so on, have all been introduced to improve efficiency. Still, it is very important for General Counsel to understand how technology affects business and to recognize relevant risks. This new challenge can be especially problematic considering that most General Counsels do not have technical backgrounds.

With such a broad list of tasks and obligations it is understandable that the role of General Counsel is viewed as an

ever-more integral part of the senior management team, necessary for obtaining advice on business issues from a legal perspective. Being part of the highest management requires some new skills as well. Finding the proper distance from decision making to preserve the independence to ask questions and challenge decisions when necessary is beneficial for the organization and General Counsel equally. In order to achieve this balance it is important that General Counsels are permanent presences in all high-level company bodies, though whether that means the board or executive committee or as a direct advisor to the General Manager or CEO is a question of corporate governance and structural set-up. Only in this way can the prompt and timely identification of risk be guaranteed, to allow for the identification of comprehensive solutions to be found. In addition, a high position in the corporate structure is more effective in promoting independence than in endangering it. Also, the General Counsel presence makes an important contribution to the discussion that must take place at the decision making level.

“Being part of the highest management requires some new skills as well. Finding the proper distance from decision making to preserve the independence to ask questions and challenge decisions when necessary is beneficial for the organization and General Counsel equally.”

The evolution of the role is not final yet. We will probably see different football or basketball in the future too. As the world changes a new shape of the General Counsel's role will certainly be introduced as well. General Counsel is not just a technical lawyer; he must be Master Yoda taking care of ethical obligations with perfect legal knowledge and a strong business outlook and be highly familiar with new technologies, so that he or she can effectively anticipate risks and prevent problems. In order to deal with this evolving business environment, new kinds of competencies are required and expected from the legal function. This new role is demanding, but undeniably useful in helping companies to shape strategy and achieve their corporate objectives. General Counsel should be recognized as the keeper of the corporate reputation and must help to create a work environment where legal risks arising from day to day work are identified and addressed.

Gligorije Brajkovic
Head of Legal and Compliance at Unicredit Bank

MORE THAN LAWYERING

“We must be forward looking business partners, seated at the table at which strategic decisions are made.”

In the 18 plus years I have been an in-house counsel I have had the opportunity to observe the evolution of that role. These days, in-house legal counsel do more than simply review contracts and provide legal counseling. We are no longer transactional clerks who merely approve what has already been done. General Counsels have evolved from being purely legal advisors to being strategic advisors. It is not enough now merely to provide guidance and business solutions on specific issues or resolve disputes that may arise. We must be forward looking business partners, seated at the table at which strategic decisions are made.

Today's environment is more complex and demanding, and the traditional way of working is no longer sufficient. We must learn to be more agile and flexible and to take manageable risks. This is the differentiation point for us from outside counsels.

Since business and the number of internal clients is growing constantly, and there is naturally a commensurate increase in the work load – though the resources available to you may not have increased accordingly. The solution to managing this problem is empowering your team and internal clients to free up your time and focus on work that matters most. I always encourage my clients to share their expectations, fears, and plans in advance. The nature of my re-

lationship with clients defines the level of service we can offer. Communication and trust is essential to be able for sustaining a smooth business relationship. Educate clients, create culture within business, so you can empower business clients.

We should aim to support the strategic direction, growth, and productivity initiatives of the companies that we work for by providing proactive and effective legal advice in a timely and consistent manner. I believe our role should focus more on ensuring that the business operates using sound governance that protects the company's people, resources, technology, brands, and reputation. In order to do so we should develop a business acumen and understand how the business works. My philosophy is to treat my job/function as a business unit and have a functional mission which serves my company's vision.

In previous decades, the expectation was that the legal department would be staffed by experts, but the current trend is towards employing generalists while retaining a center of excellence within the function. Developing ourselves and broadening our knowledge is key. We have areas to master that we were not taught at school. Following legislative developments proactively by means of external networking definitely helps in this task.



Another critical way that the in-house counsel's role is evolving is the new focus on Compliance. Non-compliance has an impact on the company's financial results and reputation and sometimes even on individuals. The bar is getting higher every day. That's why we should be pro-active in identifying areas of potential improvement by conducting self-gap & opportunity assessments.

We should live the "acting like owners" culture and seek to simplify and standardize compliance systems and processes. With my team and the support of our company we implemented some tools which have helped us to be more productive and efficient. For example, we designed and implemented a tool that helps us to review and approve government dealings; an online review and approval platform



"Encourage clients to share their expectations, fears, and plans in advance."



"Aim to support the strategic direction, growth, and productivity initiatives of the companies."



"Develop a business acumen and understand how the business works."



"Seek to simplify and standardize compliance systems and processes."



"Ensure institutional memory is important, and in order to transfer know-how."

for contracts; and a functional share-point site to allow business clients to obtain what they need with the guidance of available check-lists, cheat-sheets, and trackers. These days accessibility from offsite with smart phones makes the use of such tools easier and more user-friendly. These tools and platforms not only help us to review and respond to inquiries, but minimize the time we need to do so. Most multinational companies have at least quarterly reporting and internal compliance audits. These tools and mechanisms help us to be ready at all times.

Structured filing and record keeping is critical as well. In their absence, you risk getting multiple legal opinions on the same topic couple in different periods because you forget or cannot find what is already available. In addition, if you do not keep them available to others, then they leave the company when you do. Ensuring institutional memory is important, and in order to transfer know-how, you should keep those files available and accessible.

Of course if you manage a team, proactively deploying our people management and development routines throughout the year for business associates is also essential.

Thus, what we do is more than lawyering.

To make a long story short: We should champion the "lawyer as persuasive and integrated business counselor" operating philosophy. We should be more proactive than reactive in seeking to identify and address issues early enough to prevent the disruption and distraction and allow our businesses to be more successful and impactful.

Zeynep Derman Kucukonder, Legal Director at Coca-Cola Turkey, Caucasus and Central Asia



FROM SPEEDBUMPS TO COLLABORATING PARTNERS: THE CONTINUING EVOLUTION OF IN-HOUSE LEGAL SERVICES

Years ago, when a group of in-house lawyers entered the elevator of a bank, someone would mock, “Wow, what a bunch of handbrakes!” While this did not personally happen to me, I am well aware that internal legal counsels are often referred to as “problem factories” or “speedbumps” – the couriers of bad news, best to be avoided. I must admit, this scorn was not without reason. But, should this necessarily still be the case? In my view, not any longer.

I am a banking lawyer. During the 17 years of my career, I have worked with a number of different employers and organizations. I started with the banking supervisory authority in Budapest, spent many years with an international law firm, and then worked as a sole practitioner. Most recently, I have spent many years now in the legal departments of several banks.

The common denominator of all my workplaces has been banking law, as I have worked on more or less the same type of deals and applied the same laws and regulations. The differences were more in the structures and approaches of the organizations I worked in. Each of them had a set of specific features which had to be taken into consideration when designing an efficient and seamless legal support system. None of these specifics concerned the knowledge of law or their application. They were rather about processes, operation, efficiency, and the right approach. In my current position we are striving to create a system which is a combination of all the best practices of my previous workplaces.

What are, therefore, the secret ingredients of a successful heavyweight legal team, regarded as a true collaborating partner by the rest of the organization?

Ingredients: The main elements of success for an in-house team are multi-functionality and variety; in my view, homogeneity is always to be avoided. Diversity is a particularly important factor when selecting team members. And I do not mean this in the classical sense only (*i.e.* gender, fam-

ily background, *etc.*). In a good team, the best qualities of different types of lawyers should be blended at an optimal level.

My experience is that the ultimate guiding principle of good external counsels is client focus, coupled with a service-providing mentality. Good external counsels do not think simply in terms of paragraphs of law, but attempt to understand the deal in its entirety, including its purpose and processes involved. Then they will go to extremes to deliver results within legal limits. The forte of in-house counsels, on the other hand, is their intimate knowledge of internal operations, processes, organizational architecture, and behavior. They are often called for troubleshooting. They are the practical testers and implementers of contracts, thus they see the pitfalls and shortcomings of real life application of, for just one example, LMA-based lending documentations. They are perhaps less flexible than their external counterparts, but will also go to extremes to protect their employer’s interests.

*“Diversity is a particularly important factor when selecting team members. And I do not mean this in the classical sense only (*i.e.* gender, family background, *etc.*). In a good team, the best qualities of different types of lawyers should be blended at an optimal level.”*

In my current team we have a wide variety of different skills. There are colleagues who have experience as external counsels who often have worked at international law firms, others who have gained experience in various banks, and some



who come from outside the financial services sector. We have worked through economic booms and deep recessions (and everything in between), supported large transactions and foreclosed securities, and seen companies rise ... and become insolvent.

Headcount. Staff headcount in legal departments can shift between two extremes. Some companies keep their in-house teams to a minimum and outsource all major items to external counsels. Some, however, take the view that only employees can be truly loyal, and accordingly operate with an inflated headcount. The first solution exposes the organization unnecessarily, as in my view taking ownership for the job at hand is increasingly difficult when the lawyer is remote from the organization. On the other hand, the second extreme creates inflexibility when planning costs and budgets. When not certain if a given headcount is right for the company at a given period, just ask yourself this: If this department was your own law firm, how many lawyers could you employ and afford to pay and also, would the clients be paying for the services of the selected colleagues?

With my team, we went for a middle of the road solution with regard to headcount design. We introduced a time sheet system which, on the one hand, gives daily information regarding capacity utilization, and on the other hand provides the ability to track actual changes of capacity requirements over the long term. Our internal resources allowed us the flexibility to work with external legal services as and when required. External counsels always co-operate closely with an in-house lawyer on our team designated to handle the file, thus ensuring the most efficient and quality assured legal support.

Organizing workflow. Each and every lawyer has an area of law where he/she is particularly strong. Supporting busi-

ness on a one-man-show basis is, however, dangerous. This can only work well as long as the capacity of the given person is used in a balanced manner or when he or she is not absent from work. The strength of a legal department can be found in team dynamics, flexibility, and seamless substitution of experts.

We, therefore, implemented a core team support structure, whereby a business area is supported by two to three colleagues and each lawyer has several areas to support. This gives the business a balanced and even flow of service, while my colleagues enjoy a variety of different practice areas and peace of mind during their holidays.

Maintaining motivation. In the very likely event that the above “secret ingredients” allow you to put together a reliable and strong team, it is important that, going forward, the organization demonstrates a good level of commitment towards it, including in the provision of opportunities to improve professionally in the form of internal and external trainings and courses. In addition, frequent personal feedback and acknowledgements of performance have to be consistently applied both in formal and informal ways. Finally, based on personal trust, a better work-life balance needs to be promoted in the form of more flexible working schedules.

“We, therefore, implemented a core team support structure, whereby a business area is supported by two to three colleagues and each lawyer has several areas to support. This gives the business a balanced and even flow of service, while my colleagues enjoy a variety of different practice areas and peace of mind during their holidays.”

In our team, colleagues work in a flexible working schedule; *i.e.*, there is no strict “nine to five presence” policy. They have remote access to their workstations. They can organize their schedules of internal and external meetings and other activities. Sitting in the office is not an essential measure of discipline and performance. Having said this, timesheets, capacity, workflow/deadline management monitoring, and internal client feedback are increasingly and frequently used in order to ascertain that this system achieves its objectives.

As a final note, the evolution will always be a work-in-progress. The most important is to have a strategic vision, aligned with the wider corporate interests, which has to be pursued relentlessly while accepting that most probably it will always be a moving target in an ever changing environment.

Csilla Kovari-Graner
Head of Legal Department at Erste Bank Hungary Zrt

THE IN-HOUSE COUNSEL ROLE: DEVELOPMENTS AND CHALLENGES

The method of providing legal services has changed a great deal over recent decades. This is true both globally and in CEE, which has been integrating rapidly into the global economy. In this process, local subsidiaries in the region have absorbed key trends and practices from their Western headquarters, business processes have upgraded and developed, and business itself has become more cross-bordered and technologically advanced.

Legal functions cannot remain resistant to these changes either. Therefore, I would like to share my observations on key in-house developments across different industries in Ukraine and CEE over recent years.

First, there has been a migration of how the in-house legal role is perceived from goal keeper/"no"-sayer/ employee with weak business penetration to true business partner playing a more strategic role which can clearly add value. Now a best-in-class legal department is viewed as a busi-



ness unit integrating "old school" legal support (things like contracts, litigation, provision of legal perspective/advice, corporate governance) along with newer responsibilities involving ethics & compliance and risk estimation and mitigation. The shift from a "solve my problem" approach to a proactive forecasting of issues and preventing risks seems to be a common trend.

For sure, this has required expanding legal professional competencies. Traditional competencies, like drafting, negotiating, and litigation and mediation skills have now been supplemented by in-depth business knowledge, project management, and familiarity with the basics of finance, sales, marketing, communications, and relevant industry specifics.

Knowledge of the legal process in isolation is no longer mainstream; lawyers are expected to integrate with their clients and be involved members of business teams. This requires additional education and coaching, of course – but the return on investment in this case is enormous. Lawyers with the necessary training and ability can be deployed through the introduction of legal business partnerships and involved early in the design and execution of key functions and business projects, initiatives, key kick-off meetings, and so on.

Many in-house legal departments have introduced such changes as:

- Allocating work which does not necessarily require legal skill to other units (e.g., one-type recurring disciplinary actions);
- Allocating target resources such as budgeting and payment processing to technical functions;
- Simplifying the legal structure to reduce reporting lines and processes duplication.

Some General Counsels have introduced business concepts to evaluate individual performance within their teams such as setting business KPIs as part of salaries and bonus plans and department and individual development plans. A common challenge involves changing the culture of work evaluation by training the team to measure results in quantitative terms like economic effects and cost and return ratios and to avoid legalese when speaking to colleagues outside the legal team.

The role of Chief Legal Officer in particular has, naturally, changed significantly as well. Now one can hardly find a company where the General Counsel is not a board member. The role of Head of Legal has three dimensions: (1) leader of a legal team; (2) solid business contributor; and (3) strategist. The General Counsel is expected to analyze and advise on issues legally, ethically, and objectively; and by this bring additional insights to key strategic decisions.

Another trend worth noting is the increased globalization of business, which has increased the need for in-house lawyers to manage cross-border M&As, financial transactions, and compliance across multiple jurisdictions. In-house legal functions are expected to obtain knowledge about the FCPA, the UK Bribery Act, the basics of common law, and international litigation and arbitration – at least enough to allow them to organize and streamline working process with external counsel and to track performance and manage projects at appropriate levels of understanding.

Finally, yet importantly, there is the rapid digitalization of business and industry. As the amount of data has increased, and business processes have speeded up, legal functions need to seek software systems and solutions such as contract management systems, data search, online document storage, automatic document assembly and document sharing, and legal project management and matter management software.

The role of Head of Legal has three dimensions:



All of this – the increased role and importance of in-house counsel to business processes, the globalization of business, and the expanding technological tools necessary – have resulted in the size of in-house legal departments growing as well. For instance, in Ukraine, in-house legal departments in many industries grew at a 100-200% rate between 2009-2016. Unsurprisingly, as those departments have expanded there has been a decrease in the amount of work externalized as well. This trend is driven by both cost- and process-effectiveness considerations, as in-house legal resources are much cheaper and in-house lawyers are much more familiar with their business and the relevant industry.

To sum it up, over recent years, in-house teams have evolved from traditional legal departments into integrated business functions that provide a wide variety of legal and commercial advice as strategic trusted advisers. It has become common practice for General Counsels to be a natural part of the C-Suite. The biggest challenge for legal teams is keeping the right balance between sometimes contradictory roles of true business partner and guardian of company integrity and reputation.

Ivan Kravstov
Senior Legal Director at Carlsberg Ukraine

TACKLING THE GENERAL COUNSEL ROLE

“Although the core structure of any company is its core business, its product, its service, or its go-to-market solution, the legal framework in which that product or service is created or offered and marketed makes the difference between a successful company that can focus entirely on its product or service and a company where its risk profile is always high.”

The legal department is one of the support functions in an organization which is, or at least should be, constantly evolving together with the organization it supports. It cannot be too static or too inconsistent in its approach and way of handling the organization's legal matters.

Although the core structure of any company is its core business, its product, its service, or its go-to-market solution, the legal framework in which that product or service is created or offered and marketed makes the difference between a successful company that can focus entirely on its product or service and a company where its risk profile is always high. The ramifications are most visible once success starts knocking on its door.

This success can have many forms. It can come either through a large investment or an extraordinary demand for the company's business solution or product on the market.

This triggers an almost instant cash flow and widespread interest in the field where it activates. While the form of success can differ for each company, the immediate consequence is the increased level of attention the company gets on the market from competitors, customers, media, and in the end, from relevant regulatory authorities.

The nature of the business determines the particular legal matters on which a company should focus. Thus we can distinguish among “vital company matters” and “general company matters.” Where we draw the line to make this distinction may, however, be a delicate matter with no obvious solution. A legal professional might insist that from a legal point of view these have the same importance and value for a company. Nevertheless, for management, certain matters are more important to the business of the company than others. Therefore, making this distinction should be a concern – not only for management but also for the legal



department. Only once those “vital company matters” are properly addressed is the company able to shift its focus to the “general company matters” and work on both categories somehow simultaneously.

This distinction is therefore extremely important for the General Counsel. It is not something that needs to be documented in processes or procedures because you cannot (as a legal professional will make sure to stress) actually differentiate among the legal matters that need to be addressed in order to be legally compliant. For example, it would be difficult to find a legal professional who could say that it is more important to make sure that company is tax compliant

than that it is privacy compliant or that employment law issues in a company trump competition law risks. All these are equally important and compliance with the law overall makes a company successful and protected against potential risks and liabilities. The fine line that a General Counsel should address in his/her work is to understand which of these areas need to be focused on in the early stages of the business and which afterwards, when the company starts reaching its more mature stage. Should there be a matrix of focus points based on the likeliness of their occurrence, or should the legal department treat all issues equally, irrespective of the likeliness of occurrence and ignore the nature of the potential risks?

Either way the challenge for the legal function is constantly present. One way to address vital company matters and general company matters is to create appropriate mechanisms within the legal department that would allow it to timely predict potential legal issues and categorize them in order to prevent or contain any risks. In this way, the level of focus and resource allocation are properly made while an eye is constantly maintained on the newest technology developments.

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These technologies have an essential role in the shift from a traditional conservative legal approach (which may be burdensome both on legal and on business) to a more modern and agile legal function. The implementation of technology is vital to a modern and effective legal department, allowing traditional types of work to be translated and performed by technological tools as smoothly as possible. There is a

tremendous opportunity for legal departments to incorporate new technologies in their work. Risk assessments can now be made formally by the legal department in a company (or even within a law firm) using state of the art tools to improve its legal support for the benefit of the entire organization or its customers. For example, the implementation of certain tools such as those allowing for electronic signatures (e.g., Adobe Sign, DocuSign, *etc.*) may make paper-based contracts almost obsolete (though it is, at the moment, still far from being the rule in the industry). Contracts or other documents once agreed-upon can be signed by the parties wherever they are, provided that they have access to the Internet or a smartphone, with the help of these tools. Of course there may be certain legal limitations – but those mostly apply to documents that need a notarized form in accordance with specific laws (and even with respect to these documents it is conceivable that laws will evolve and will make them a thing of the past). As a result, a paperless approach needs to be the cornerstone of every legal department's strategy, as it is advisable to prepare for and get on board with the latest technologies sooner rather than later. The development of automation tools, such as UiPath Robotic Process Automation Platform, can help with creative thinking on how to solve various repetitive tasks in the legal field by creating automatic workflows that can reduce burdensome human intervention, allowing legal professionals to focus on more important tasks. Meanwhile, cloud hosting solutions such as Google Cloud Solutions and other collaborative tools allow legal professionals to access their documents and drafts anywhere.

“Another important challenge is to change of the mindset that legal is purely a support function.”

The use of the most recent tools that technology has to offer is only one of the changes that can be implemented in a modern legal department. Another important challenge is to change of the mindset that legal is purely a support function. The legal department is a business partner in the company, and it should constantly highlight its role as such. The legal function can add value not only with respect to legal matters and prevention work which it is inherently tasked with but also with respect to the adjustment of internal company processes and procedures in order to make them more efficient. From this point of view, the General Counsel is a critical source of change and innovation, taking the company forward with minimal legal involvement. A company's success goes hand in hand with openness and

in-depth understanding of the company's business by the persons in charge of the execution of its objectives, including the legal department.

Another important characteristic of a successful legal department is effective collaboration with outside counsel. If the changes and overall approach of the internal legal department are not promptly adopted by the corresponding outside counsel, it can drag a project on for a very long period of time. It is essential to ensure that the constant evolution of the internal legal department is implemented also by its external collaborators. In this way, the external collaborators will not remain blocked in a conservative approach which would put a break in the evolution of the legal function of the company. The typical challenge the internal legal department faces in its work with external legal counsel is the mindset that the two are not parts of the same legal function. This leads to a dynamic where the internal legal department's approach is closer to the practical and business side of the work, focused on being more adaptive, while the external legal counsel is more detached and risk-adverse on any issue on which their advice is requested. This often comes from a lack of understanding by the outside counsel of the actual issues facing the internal department and the solutions it needs, and until both sides are on the same page there can be a lot of back and forth, potentially leading to delays affecting the business of the company.

It is true that it is the internal legal department's task to make sure the external counsel understands the requirements and needs of the company, as well as to set the right expectations. This does not diminish in any case the proactivity which is expected from the external counsel in highlighting certain aspects and risks without waiting for action from the internal counsel first. Although the lack of visibility into the company's internal operations by the outside counsel may indeed impact their capacity to proactively look for and propose solutions, there are ways of overcoming this issue, such as making the effort to engage more often with their legal counterparts from client organizations. It is often the case that the outside counsel views their involvement as limited only to a specific issue without making additional efforts to understand the business they support. Shifting from a reactive type of legal support to a proactive approach is the key factor of a successful internal-external legal teams' relationship.

General Counsel set the tone for their teams – including both immediate internal people and also external advisers – by constantly seeking to improve and by using the latest tools available to work more efficiently towards fulfilling the company's needs and objectives.

Vasile Tiple
Legal Lead at UiPath



C/M/S/

Law . Tax

CMS tops M&A rankings again

2016 was another outstanding year for CMS' Corporate/M&A group, with excellent M&A rankings across Europe by deal count. With over 300 deals CMS advised on more transactions than any other law firm in Europe.

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in UK

source: Bloomberg, *Bloomberg, Mergermarket and Thomson Reuters

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THE Y-WAY TO THE 21ST CENTURY

“I believe the key element of the changes is the people we work with.”

The rapid transformation (one could almost say the revolution) of the world of legal services is a fact and has been taking place for some time now. In fact, I believe it is now gaining its full momentum. This transformation affects both law firms and in-house legal departments. It started several years ago with cost-cutting, as clients expected more and more for less and less: in-house legal departments from external law firms, and internal clients from in-house lawyers. More changes followed.

It is no longer sufficient to have merely a traditional knowledge of the law. Clients (by whom I mean both law firm clients and internal clients of in-house law departments) expect lawyers to provide solutions to their business problems. Additionally, providing advisory services of a strictly legal nature is no longer sufficient: one must be familiar with and understand business, have (an increasingly broad) understanding of management, and look at problems at hand and their possible solutions strategically and with a broader view. Moreover, a lawyer must be able to work in a team and understand (although a number of us will find it difficult to come to terms with this fact) that there may be teams where he or she will not be the leader, but a member, and the matter will not involve a legal project but a business one. We must also bear in mind competences in the field of finance, project management, and IT.

As if all that weren't enough, start-up initiatives (whether independent or affiliated to large international law firms) are springing up like mushrooms, focused on automating selected legal services using advanced IT technologies or artificial intelligence.

So many years – if not centuries – of the traditional model of prosperity ... and now within just a few years the world has been turned upside down.

Let's be honest: March or die! There is no other way than to accept the changes and start benefiting from them.



Frankly speaking, I welcome the changes with joy and relief; I could not wait to see them. I do not perceive them as a threat. Not at all! For me they are a fantastic opportunity to participate in an exciting venture, a great adventure, which offers me the chance to become a fully-fledged lawyer of the 21st century, providing services suited to contemporary (and future) requirements.

I believe the key element of the changes is the people we work with – the members of our in-house teams. There are two good reasons for this: First, we cannot change anything without them; and second, it is these people that frequently force us to make the changes.

“Let's be honest: March or die! There is no other way than to accept the changes and start benefiting from them.”

The market is starting to be dominated by people commonly known as the Y/Millennial Generation. Let us not pretend that we don't know: They also include lawyers, and we are either already working with them now or we are going to work with them in the near future. A lot has been said about the qualities of the Y Generation, how they differ



Experts in the form of sociologists and HR professionals usually name several major qualities which are distinctive for the Y Generation:

■ they are well-educated

■ state-of-the-art technology is part of their daily lives

■ they know their own value

■ the purpose of work is to satisfy their ambitions, lead to intellectual freedom, and ensure development

■ if their current job does not give them satisfaction a change of job is not a problem

■ they tend to like handling concrete tasks, seeing the effects of their work quickly, and getting immediate feedback

■ they prefer flexible employment both with respect to working hours and the place in which/from which they work

■ work-life balance is important, as they do not put their careers above fulfilment in their private lives

from past generations, and why they differ so much from the X generation (which I am told I represent). I get the impression that these descriptions are dominated by an image and evaluation of the Y Generation, albeit not straightforwardly expressed, yet negative and formed from a distance, which presents them as somehow “extravagant” (momentarily, those describing them hope) compared to what is proper and normal.

A number of my colleagues both inside and outside the legal profession look upon the Millennials with concern, and while some indulge them, most think that they will not make proper lawyers in the full meaning of that term, or committed lawyers, because a good lawyer has qualities and stands up for values that are the exact opposite of those of the Y Generation.

I think they are wrong. Millennials can make fantastic lawyers and members of our teams, if we just put aside our prejudices and stereotypes and are open to what they offer.

Is there anything wrong or dangerous in these qualities?

Expectations of the Millennials will force us to set clear goals, identify the sense in each task, and provide clear and immediate feedback, which can only increase efficiency.

When work is a pleasure and fulfils our intellectual ambitions, we work better and are more willing to work, while new ideas come effortlessly.

Freedom in the world of modern technology may open up paths for legal departments which until now seemed quite inaccessible.

I believe in-house lawyers may accomplish a number of their back-office tasks equally effectively, whether sitting at a desk in the company’s office or working anywhere in the world with their laptops. Yes, I do believe a lawyer may be a digital nomad, why not? And in this situation our colleagues are sure to accomplish their work-life balance. And since I am talking about the work-life balance: Do we really believe that work is more important than private life, family, and hobbies, and that leaving the office before 8:00 p.m. is unnatural?

I have spent most of my professional life as an in-house lawyer, and the last few years as a GC, and from these perspectives – both as regular lawyer and manager of the entire department – I can say, with full confidence: Let’s treat Millennials as a gift and an enormous chance, for us personally, for our departments, and for entire companies. They can offer a fresh perspective, courage, and a new outlook on rules and values. They may force us to ponder our private lives and careers. They may help us change how our profession and its role in companies are perceived. And they will be one of the elements that will help us become successful lawyers of the 21st century.

Marcin Bryniarski
General Counsel at Oknoplast Sp. z o.o.

WHERE IS THE ADDED VALUE OF THE LEGAL DEPARTMENT

It is good to have at least general idea of the answer to the question of where the added value of the legal department lies, otherwise you might become a very expensive administrator whose contribution to a company success is questionable.

My experience as an in-house lawyer comes from work in legal departments consisting of up to four people. I have worked in long-established legal departments and those I had to create from scratch. The only common feature of the companies I worked for was that they were in a constant process of transformation, always entering into new businesses and new areas of risk, and thus constantly challenging their lawyers with additional work. Being overloaded with work, you have to ask yourself every day whether doing something is really valuable for the company or is just a simple administrative task better performed by someone else.

How You Are (Dis)Organized

A lack of proper understanding of the legal department's role results in it being overburdened with mundane and non-critical "legal" work. Quite often in this context "legal"

means that the use of Microsoft Word instead of Excel or Power Point is required. This is a simple way to transform a legal department into extremely expensive administrators who do not create much (if any) added value in projects they are involved in, with a presence the company may find difficult to justify.

Unfortunately, there is no one good answer to the question of what the role of the legal department should be. It is evident that when you ask your colleagues they might have very different expectations in respect to the areas where in-house lawyers should support them. Some expect legal help with drafting any communication to third parties, some prefer to limit lawyers' work and consult with them only regarding single sentences in an agreement without providing them any context.

"Unfortunately, there is no one good answer to the question of what the role of the legal department should be."



The different expectations are often related to the different set up of an organization; for instance, contract management often is assigned to the legal department not only directly, but also often due to the common understanding that if something is not clearly assigned to any other department, legal will handle it. To preserve capacity to work on tasks where your input has really value, you need to be assertive and decline (in a polite manner) all requests which are disruptive to work and related to a misunderstanding of the in-house lawyer's role.

Naysayer – No, I Do Not Think So

Based on the questions asked about the role of legal department, I sometimes get the impression that many believe that an in-house lawyer's job is primarily to say "no" every

day. This is related to the outdated perception that a legal department consists of naysayers and deal-stoppers.

In the last ten years of my work as an in-house lawyer I am pretty sure that I did not say "no" to a deal more than a handful of times. My role is not to stop the deal but to find a legitimate way of doing it which also suits the company's business model. If something important from the legal perspective needs to be highlighted, you need to do that, of course – and preferably at an inception stage of the project. In essence, by frequently saying "no" without proposing any legally safe and acceptable alternatives, you are failing in your role as in-house lawyer. You should be perceived as an enabler of projects, and as someone who helps find a legally safe way of implementing them.

“To preserve capacity to work on tasks where your input has really value, you need to be assertive and decline (in a polite manner) all requests which are disruptive to work and related to a misunderstanding of the in-house lawyer's role.”

Of course, you need to understand what “legally safe” means, because doing business often involves a certain level of legal risks. Various companies have different appetites for the risks related to their activities. The companies I have worked for valued their brand perception and integrity of their employees, therefore a quite significant number of legal risks were ruled out by definition and without the need for a legal department to escalate them (e.g., regarding corruption, bribery, etc.).

However, we all know that the law is not always clear, and – depending on a court's interpretation – we may face some additional costs which can significantly impact the business model adopted for a specific transaction. The task of the legal department is not to make sure that this risk will be entirely removed (which is more often than not impossible) but to quantify the potential exposure and its likelihood in a way that can be understood by business, included in the business model, and constitute a basis for a business decision.

Longing For Crisis

The ultimate test for in-house lawyers usually comes during a time of crisis. This is the time when you should show legal knowledge, integrity, and business understanding. During crises there is often not enough time to fully utilize external lawyers (due to the dynamic situation), therefore in-house lawyers need to take much more pressure on themselves.

Moreover, apart from legal knowledge proficiency in the use of Power Point and to some extent Excel is required to properly communicate with company's executives. Apart from those technical skills, this also requires good understanding of the nature of the crisis and alternatives which are available to the company.

A huge crisis does not happen frequently – but smaller ones are not unusual. This is (unfortunately) the simplest and quickest way to raise your profile within the company, as no-one questions whether an in-house lawyer adds value during a crisis or not. However, the downside is that failure to perform in the face of the crisis (or, of course, being responsible for it), may be the simplest way for a lawyer to get fired – so there might not be a second chance.

Business Advisory – Can You Learn This At Law School?

Nowadays business works together with in-house lawyers from a project's inception to its end. In-house lawyers need to provide advice on the project's structure and its legal ramifications, and may need to draft/review agreements.

The main objective of the legal department is to find not only the way to implement a project, but also to implement it in the most efficient way, preferably with limited or no external legal costs. In-house lawyers also have to be aware how their advice impacts a project's financials; *i.e.*, they need to provide pragmatic advice considering both business outcomes and legal consequences.

In order to have a broad business perspective and sound business judgement on top of their legal skills, in-house lawyers need to be connected with their business colleagues on a day-to-day basis. Only then can their advice provide added value for the business, as communication in financial terms (often related to short and long term gains) will be perceived by business as especially valuable. They should also be able to distill complex issues down to specific items and act sometimes as project manager, to bring all stakeholders together in order to work out a proper solution.

Moreover, business advisory is the area where in-house lawyers are able to differentiate themselves from external lawyers who are often perceived as specialists in isolated areas of law but due to either lack of knowledge about a particular business or their obligation to protect their law firm from liability, rarely offer genuine business-strategy advice.

Summary

Even in most promising projects, in-house lawyers must make sure that the right thing is done (and escalated if needed) regardless of consequences. However, at the same time, in-house lawyers have to contribute to the bottom line of the company not just by preventing something that is

“In essence, by frequently saying ‘no’ without proposing any legally safe and acceptable alternatives, you are failing in your role as in-house lawyer. [...]”

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However, we all know that the law is not always clear, and – depending on a court's interpretation – we may face some additional costs which can significantly impact the business model adopted for a specific transaction. The task of the legal department is not to make sure that this risk will be entirely removed (which is more often than not impossible) but to quantify the potential exposure and its likelihood in a way that can be understood by business, included in the business model, and constitute a basis for a business decision.”

wrong, but by proposing alternatives which are compliant with business models proposed for a given project.

Of course lawyers are always required to do some firefighting, but by our presence in business coupled with pragmatic advisory and the promotion of compliance we need to ensure that the number of crises is kept to a minimum. If we can avoid being overburdened with mundane tasks that do not require lawyers (but no-one else wants to take care of) and constitute distraction from other tasks, we should be able to prove our value to the company and facilitate its success (despite the fact that performance measures for in-house lawyers are still in infancy, but that is a topic for a different article).

Rafal Skowronski
Group Legal Counsel at Ericsson

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For a fourth time, we have been awarded the prestigious Chambers Europe Award for Excellence. This achievement could not have been done without you, our clients. This is why we would like to thank you for your trust, which for us means a strong commitment to continue providing first class legal services, not only now in the third decade of our law firm's existence, but also in the many years to come.

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"A client describes the lawyers as always being "very well prepared" and adds: "I appreciate their negotiation skills."

"Wide range of the team's experience and ability to work on all matters."



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HOW TO BREAK THROUGH "COMPLIANCE NOISE"



Compliance Matters

The role of the in-house legal counsel in recent years has become intensely intermingled with compliance matters, which are of huge importance for international corporations. For example, American companies place great importance on anti-corruption compliance, and the U.S. Foreign Corrupt Practices Act is widely known and complied with in Europe due to its extraterritorial application.

“Our advice to companies is to establish a risk-based approach tailored to the specific needs of their organizations rather than a ‘tick box’ compliance exercise.”

Another area of importance is competition compliance. Competition authorities such as the European Commission are quite active in investigating anti-competitive agreements and abusive behaviors of dominant companies.

Furthermore, as part of compliance programs and process-

es companies are focusing on risks related to fraud, health and safety, data protection, and cyber crime.

A core reason for the enhanced compliance systems and processes are the heavy fines (e.g., competition law infringements may lead to fines as high as ten percent of the annual worldwide turnover of the undertakings), damage to reputation, and potential for director disqualification and even imprisonment that may result from violations.

Thus, it is logical that the role of the legal counsel is often combined with that of compliance officer as compliance matters have significant legal implications.

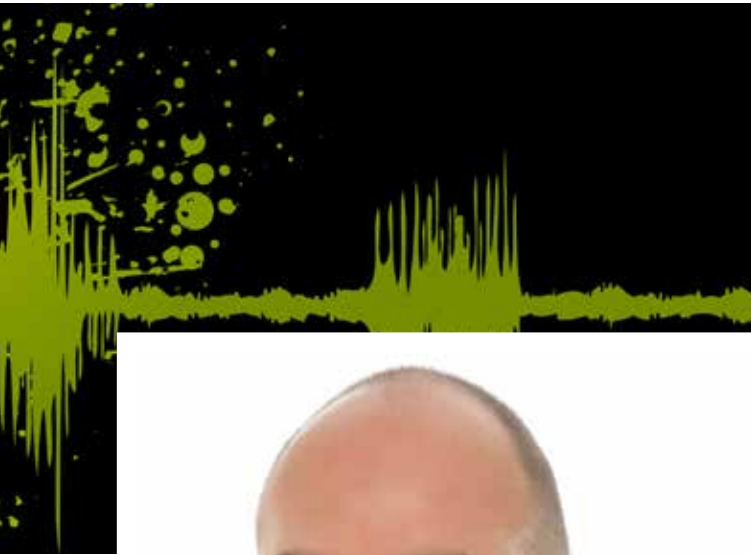
Successful Compliance Programs

Companies and organizations should have a zero-risk appetite for breaking the law and violating the compliance programs in place. It is also vital that a company’s culture positively supports ethical and legal behavior.

A clear compliance program should be business-friendly and well understood. It is important both that the program be advocated from the top down, across the entirety of an organization, but also that there be bottom up buy-in from the business side.

The problematic issue with many compliance programs and processes is that they can be too heavy for the business to digest and sometimes create so much “noise” in the organization that employees lose sight of the essence of the message. They are often over-complicated with legal terminology and burdensome rules.

Our advice to companies is to establish a risk-based approach tailored to the specific needs of their organizations rather than a “tick box” compliance exercise. Many factors are relevant and should be analyzed, including the relevant industry, the external environment in the country, corruption perception, mentality of the people, and so on.



In 2016 we at AVON in Central Europe piloted an interesting way to present the essence of the legal and compliance rules under the internal brand of “Simply Legal.” Our materials are business-friendly and straight-forward. They present the basic topics in a way that is interactive, funny, and easy to remember.

As part of Simply Legal we created 60 second guidelines, DO and DON'T lists, videos and cartoons, and dawn raids guidance and instructions which are short in time and easy to remember. People learn while they have fun. The old-fashioned way of presenting long texts or power point presentation is far from catchy. People want it light and fast. In the digital era and with the dynamics we face in all industries and spheres, creativity is crucial to catch the attention of the business.

Companies should ensure constant updates, contact points for advice and training, and Q&A sessions with their in-house legal counsel.

Frequently, the legal counsel is supporting a Compliance department that is separate from the Legal department. The crucial element here is the communication and alignment between the two teams.

“As part of Simply Legal we created 60 second guidelines, DO and DON'T lists, videos and cartoons, and dawn raids guidance and instructions which are short in time and easy to remember. People learn while they have fun. The old-fashioned way of presenting long texts or power point presentation is far from catchy. People want it light and fast. In the digital era and with the dynamics we face in all industries and spheres, creativity is crucial to catch the attention of the business.”

Promoting an Ethical and Compliance Culture

Many companies understand the importance of ensuring that they comply with the law and promoting a culture of compliance within their business. Commitment to compliance is vital and an integrity culture should be promoted to employees so that it is integrated in their mindset and prioritization list.

Here, apart from the trainings and other systems which may already be in place, another important component is a whistle-blowing system (sometimes called a Hot Line, Credo Line, Speak-up Line, *etc.*). Such systems allow for the free and anonymous reporting of improper behavior and practices within an organization. It is important that people feel free to use such lines anytime, anywhere, in any language, with confidence that no retaliation measures will be taken against them.

Compliance Testing & Monitoring and Compliance Audits

Integral parts of successful compliance systems and processes are compliance monitoring and audits. Whether performed by internal or external auditors/monitoring teams, such reviews allow for a check on compliance awareness within organizations, the processes behind the rules and policies, and the overall success of a compliance culture's implementation.

At this stage the role of the legal counsel is more that of an ambassador, enhancing the processes of testing and auditing by providing clarifications, explanations, and guidance to the auditing teams.

Kameliya Naydenova, Legal Counsel, Balkans Region, and Roland Csecsei, Senior Legal Manager Balkan & Germany at AVON

MY ETHICS & COMPLIANCE JOURNEY

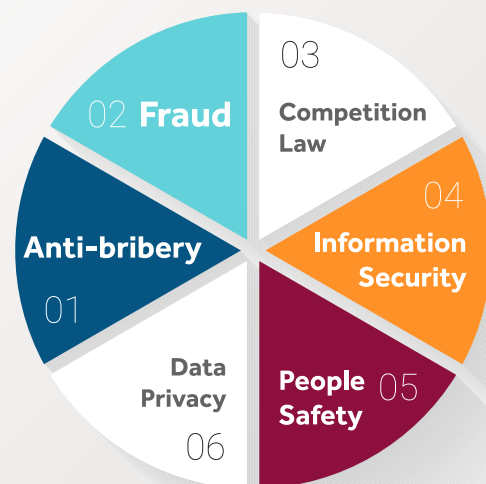
I have been working for Tesco for almost eight years, and when I joined the company, “compliance” was absolutely not a focus. We certainly followed values like “no one tries harder for customers,” but we did not know too much about compliance and about how important it should be for a well-organized company in the 21st century.

A few years later we started getting more and more familiar with compliance and recognized fairly quickly its relevance for our business. Soon, there was not a single legal conference where compliance was not on the agenda. We had many discussions about the real meaning and value of compliance, and eventually we extended the scope of our discussions to encompass “ethics” and “ethical behavior” – we had many interesting chats about the differences between those concepts and compliance (I’ll come back to this point later in this article). If I look back to our “ethics & compliance journey” at Tesco now, I think these brainstorming and discussions can be seen as the initial phase of it.

After recognizing the importance of compliance, we started to work on building various compliance programs. A Group Regulatory, Ethics, and Compliance Team prepared so-called “blueprints,” containing those items which needed to be implemented in order to establish a robust compliance system. At Tesco we have compliance programs in the areas

of anti-bribery, fraud, competition law, information security, and people safety. We are currently working on our data privacy compliance program as well, which nowadays is a very hot topic and keeps many compliance officers awake at

Compliance Programs at Tesco





nights. We have some additional ideas in our heads as well, so I am sure that this phase will be a long-lasting one.

I define this second phase of our ethics and compliance journey as the one where we set the basics (*i.e.*, create the basic elements of an effective compliance program such as policies, guidelines, risk registers, trainings, communications, monitoring, *etc.*). There is no question how important this second phase is as without having a strong basis it is difficult even if not impossible to build a nice house on it. Though I certainly like doing compliance, I should admit that this part of the journey is sometimes quite dry and boring and I am sure that when people think about compliance, almost all of them have this part in their mind which makes compliance not the most popular topic.

However, there is a more exciting part coming after phase no. 2, which can be characterized by the following challenge: how can we build a nice house on that strong foundation? In other words, how can the robust compliance system we have created be embedded into the everyday thinking and

behavior of our colleagues? Based on my experience I can say that no one should underestimate the relevance and the complexity of this phase. We find ourselves sometimes in a position where we are confident that we have a good compliance system (created in phase no. 2), but we still doubt whether our colleagues really understand our messages and follow our instructions. It is, after all, fairly easy to prepare a nice policy, but it can often be awfully difficult to implement it into the daily operations of the business. The bad news is that I do not know the key to success, if there is one. My advice is to continuously review your compliance programs and be very critical – which means that you should not be satisfied with the system itself but should ask yourself whether colleagues are really following the rules during their daily work.

“How can the robust compliance system we have created be embedded into the everyday thinking and behavior of our colleagues? Based on my experience I can say that no one should underestimate the relevance and the complexity of this phase.”

Let me share with you some additional tips which you can use to make your compliance program better. First, while reflecting on the changes of the risks – which should be done properly and in a timely manner – make your risk register live. Second, communication is never enough in order to raise awareness of the programme; in addition to e-learning and face-to-face trainings for bigger teams, organize interactive workshops for smaller groups of colleagues where you can involve them more in discussion.

As you can see, phase no. 3 is a much more challenging but also more exciting part of the ethics and compliance journey, allowing you to deal with people and do your best to change their ways of thinking about ethics & compliance. This is the part where you can transform compliance into ethics and the pure program you have created into the ethical behavior of your colleagues which should be – I think – the ultimate goal of all compliance officers.

Andras Levai, Head of Legal - CE Ethics and Compliance at Tesco Global Zrt.

ACHIEVING TRUST AND COMPLIANCE IN THE CLOUD



Rich Sauer

The accelerating shift from traditional on-premises information technology (IT) systems to cloud computing presents in-house counsel with a veritable obstacle course of compliance challenges and regulatory pitfalls. Virtually every industry today faces an expanding set of data security demands, while different countries often have their own unique privacy and data protection requirements. Even global regulatory landscapes can change with the stroke of a pen, as with the recent invalidation of the long-standing Safe Harbor data transfer arrangement between the EU and United States. Today's in-house counsel must master all of these requirements, explain them to their boards, and verify that their organization complies with them.



For a technology vendor, keeping a broad portfolio of feature-rich cloud services in compliance with an ever-changing regulatory landscape is a never-ending challenge. At Microsoft, our own lawyers engage daily with our cloud engineering teams to help them understand and implement the requirements of this complex and evolving regulatory universe.

This article discusses technical developments that in-house counsel need to understand as they evaluate cloud services and Microsoft's own experience working to meet the exacting legal and compliance requirements accompanying these developments. Our fundamental message is simple: the economic and strategic advantages of cloud computing make it impossible to ignore, but the transfer of responsibility over sensitive data and applications from customers to cloud providers requires the formation of a new framework for establishing and maintaining trust between these contracting parties.

Why the Cloud is Surging

The cloud really is a revolution, and it really will change the world. In fact, it is already doing so.

To understand why the cloud is different, we can divide the past half century of computing into four epochs. The first



Andrea Simandi

was the epoch of the mainframe, behemoths so big and expensive they could only function inside dedicated buildings owned by giant corporations. This epoch was dominated by IBM.

The second epoch was that of the PC, launched in the early 1980s by Apple, Microsoft, and Intel. These inexpensive desktop computers were first marketed to hobbyists and consumers, but soon swept the corporate world, penetrating even the smallest organizations. By the 1990s, evolved versions of the PC known as servers also came to stand alongside mainframes in corporate data centers. But these servers still lacked the power to handle the most important “mission-critical” tasks.

By the latter half of the 1990s, the third epoch of computing emerged with the connection of hundreds of millions of client and server PCs into a vast global network. Known as the Internet, this network made possible countless new applications built on the reality that any individual could now instantly communicate with any other individual or access the information and processing power of any other computer on the planet.

Although we think of the Internet as the foundation of our modern high tech world, in reality the Internet epoch was only a brief interlude. Over the past few years, it silently mutated into something new, which we now call the cloud. This new epoch is a combination of the previous epochs, but innovations in software and hardware make the cloud almost unimaginably more powerful than previous computing paradigms. After the extreme decentralization of IT brought about by the PC and the Internet, the cloud is all about the recentralization of the world’s data and computing power into a relative handful of “hyper-scale” data centers. A single one of these facilities may house tens or even hundreds of thousands of PC-like servers packed into energy-efficient, massively interconnected racks spread out over the space of a football field or more.

Within the next ten years, the majority of business applications and virtually all consumer applications will be served from perhaps a few hundred of these huge cloud data centers, located in all of the world’s major geographies. Owing to its tremendous economies of scale, on-demand usage model, and pay-only-for-what-you-use billing, the cloud will progressively make inroads into the IT infrastructure of nearly all enterprises.

The Cloud is Transforming the Compliance Landscape

On-premises IT systems will remain a vital part of enterprise computing for many years to come, especially to handle particularly sensitive data or mission-critical workloads. However, the cloud is disrupting even on-premises workloads. In the past decade, most enterprise IT organizations have embraced the software technique known as virtualization, which allows each individual hardware server to be shared by multiple “virtual” servers, thus yielding significant cost savings due to more efficient utilization of expensive capital equipment. Having first been virtualized, traditional on-premises data centers are now being “cloudified” by an additional layer of automation and management software that transforms these on-premises facilities into what industry analysts call “private clouds.”

The economic and strategic benefits of cloud computing are too large for even the most risk-conscious organizations to forego. Indeed, because the cloud will increasingly be a strategic asset for innovation and productivity for companies across the economy, almost every business in the future will be a digital business.

But by shifting the permanent residence of data and applications to data centers owned by third parties that may be located in other countries or even on other continents, cloud computing introduces a level of legal complexity that requires a fundamentally new way of working and thinking by in-house counsel.



Lesley Kyd-Rebenburg

Meeting the Challenge of EU Data Protection Laws

Big data analytics will revolutionize the ability of enterprises to understand exactly what is happening in their markets and how to shape future outcomes. Such methods require enterprises to store and analyze vast quantities of data—so vast that the accepted term is “data lakes.” Realistically, such “lakes” of data can only be stored in the cloud and in many cases they will contain PII of customers and employees and will therefore fall under the strictures of data privacy laws, including the demanding new data protection laws recently passed by the European Union.

How can multinationals doing business on both sides of the Atlantic ensure that their strategic big data analytics programs will not run afoul of rules governing international data transfers? They should partner with cloud vendors who have spent years understanding what regulators require and how to implement both the technical and the legal components of a full-spectrum cloud compliance strategy.

Recent events demonstrate just how complex this challenge can be for enterprises that operate in multiple jurisdictions.

In October 2015, the Court of Justice of the EU abruptly invalidated the U.S.-EU Safe Harbor Framework, which was based on a 15-year-old agreement between the United States and the European Commission that had enabled thousands of enterprises to move personal information across the Atlantic while remaining in full compliance with the EU’s stringent data protection rules.

At Microsoft, we had long recognized that the collapse of Safe Harbor was a possibility and had already taken steps to

prepare. Starting in 2010, we assigned a dedicated team of several dozen lawyers and public policy professionals the task of creating a new cloud contract based on the standard contractual clauses—often known as “model clauses”—that the Commission established pursuant to the EC’s 1995 Data Protection Directive.

Over a period of several years, our compliance experts met on numerous occasions with officials from the European Commission and the EU’s 28 member-state Data Protection Authorities (DPAs) to hammer out a solution. In April 2014, the European DPAs determined that the model clauses in our new enterprise cloud contract met their requirements for a valid legal framework governing international data flows. These clauses, which we now offer by default to all cloud customers, ensure that even without Safe Harbor, all personally identifiable information stored in the Microsoft cloud continues to meet Europe’s rigorous privacy standards no matter where it is located.

However, it is critical for compliance professionals and in-house counsel to understand that compliance will always remain a moving target. The model clauses we introduced in our standard cloud contracts are themselves under challenge and may give way to new regulatory requirements, just as the U.S. government and the EU have recently negotiated a new agreement called Privacy Shield to replace Safe Harbor. This is an important step toward creating a new legal framework to enable data to move between Europe and the United States in way that satisfies the data privacy and security concerns of both sides. The Privacy Shield has been ratified by the European Commission and all EU member states, but is certain to be challenged in court.

Building a Framework for Trust

Regardless of the outcome of Privacy Shield, enterprises will continue to grapple with changes in their legal and compliance requirements as they affect the use of cloud and other technology services.

At a time when technology has outpaced existing legal frameworks that govern how confidential data is protected, and governments are struggling to balance public safety with the right to privacy, enterprises must work continuously to ensure that the services provided by their technology vendors retain the trust of all stakeholders—including governments, corporations and individual consumers. For members of the legal and compliance community, trust is especially important to ensure that their clients meet regulatory obligations and community expectations while reaping the economic and strategic benefits of the cloud.

Rich Sauer, Corporate Vice President and Deputy General Counsel, Andrea Simandi, Senior Attorney, and Lesley Kyd-Rebenburg, Senior Attorney, Microsoft



Orbán  Perlaki
Attorneys-at-Law



www.opl.hu

BRAVE NEW (TECHNOLOGICAL) WORLD: ADAPT OR FALL BEHIND




The rapid development of technology and its impact on our daily lives can be witnessed in everything we do. From e-commerce to remote control of the temperature at our homes, technology has changed the way that we manage our daily tasks. Similarly, in the legal industry, technological developments – from advancements in standard legal tasks

to big data analytics – are all taking center stage in the work being done to improve the provision of legal services.

Nonetheless, the way lawyers operate has changed little in the last twenty years. Although we use new tools and devices, supported by information and communications technology, we often do so in a way that merely replaces the old functionality without truly embracing the power of technology in a bid to become industry leaders and to improve our professional lives.

Being only responsive to the rapidly changing market landscape is no longer an option. Lawyers must play a vital role in the ongoing technological revolution, proactively sup-



“The legal profession will not disappear, but it will surely change due to technology. This shift will most probably trigger new forms of what being a lawyer means. The sooner we accept it as the new normal the better off we’re going to be!”

porting their clients, regardless whether they are working within a business structure or as outside counsels. Legal professionals cannot view themselves anymore as lone wolves (or members part of wolf packs), who seek, create, and deliver legal analysis. The time when one could render legal advice and shield it with disclaimers are definitely over. In today’s business environment, lawyers must be part of a project team, working hand in hand with other divisions to deliver a result. Clients want long-term solutions that best meet their needs and that help them to navigate changes. They want to have advisors on board who understand them. To achieve that we must align our actions with business and work at its pace – and in this process technology can be a blessing.

“Connections between law firms and venture capitalists may thus be a key source of general institutional support for high-technology entrepreneurship in the legal technology industry.”

Luckily for us, an array of technological tools and services designed to help improve legal services have emerged in recent years. These new software packages can save time for lawyers who are then able to focus on clients or business development rather than busywork that can be automated. These products include management software, dedicated document management systems, case preparation and litigation support tools, e-discovery tools, trial specific software, document encrypting tools, and cloud-based research products and services. We can already observe that this field is being explored by the big law firms and venture capitalists, working with early-stage legal tech companies. Capital providers are assuming a bigger role because, apart from financing, they bring to the table support for the venture that is being financed in various forms, from access to top legal minds to the provision of free office space on their premises. Connections between law firms and venture capitalists may thus be a key source of general institutional support for high-technology entrepreneurship in the legal technology industry. Recent studies show that in the future the business of law will require fewer general support staff members, junior lawyers, and generalists – and more legal technicians and project managers. Indeed, tech skills in the areas of digital communication and collaboration, computer and data science, and statistics will become the coin of the realm in our profession.

New technologies have also given rise to new legal outsourcing services, which are changing the legal industry. Clients are no longer willing to pay for high numbers of billable hours when they are aware that many tasks can be done faster and cheaper. Paralegals and associates who once devoted hours for document review can be now easily replaced by e-discovery processes. In a constant pursuit for efficiency and optimization, clients expect more for less, which has made the legal market even more competitive. Fresh players have entered the market, providing clients with automated and cost-cutting solutions. Many see automation as the way forward, making projects smarter and more efficient. Legal automation won't be un-invented, and – eagerly or not – more and more firms will need to adopting it out of necessity.

“Certainly, the fascinating topic of robotics/ AI, given the significant public attention currently devoted to it, will soon be covered by lawyers in order to fully exploit its economic potential and to guarantee a standard level of safety and security.”

Luckily for us, an array of technological tools and services designed to help improve legal services have emerged in recent years:

- Management Software
- Dedicated Document Management Systems
- Case Preparation and Litigation Support Tools
- e-Discovery Tools
- Trial Specific Software
- Document Encrypting Tools
- Cloud-based Research Products and Services

Unfortunately, those trends are not reflected by advancements in either the management models used or in management decision-making ability. Senior leadership is often at odds with innovation and creative thinking, which slows the progress of these trends. At the other extreme are younger lawyers who may very often bring to table the best combination – background in law along with tech savvy, making them perfect for the challenges of the modern economy. Therefore, this gap should be properly addressed, in order to implement innovative concepts.

One cannot forget the other important aspect of technology to be dealt with by lawyers: The impact of technological advancement on society. Traditional rules of law and old legal institutions stay alive when they still have a purpose – or, at least, when they do not interfere with the demands of current life. Due to these recent technology developments, however, we soon will face major changes in the legal framework. The law, realizing its integrative functions, should respond appropriately to the new socio-economic relations which are developing dynamically. Rapid and unstoppable scientific and technological development triggers

urgency for new regulations to adapt to new times and lawyers have proved adept at turning old legal institutions to new purposes or creating new ones to address issues hitherto unknown to us.

Nowadays, consumers expect high-tech companies to introduce new products frequently and to offer more choices as well. The product life cycle is shortened, demanding more engineering development efforts, so equipment must increase capabilities, becoming more powerful and intelligent. Based on Moore's Law, the computing power in the Internet of Things (IoT) devices keeps growing and this increasing computational power enables a more complex running of algorithms and more autonomous IoT devices.

Indeed, if one looks at the automotive industry, one will see that the future is already here. A car's performance, for example, can be changed by altering the software settings. Cars communicate information between one another to avoid traffic jams. People consider just using cars, instead of owning them. And so on.

“Although we use new tools and devices, supported by information and communications technology, we often do so in a way that merely replaces the old functionality without truly embracing the power of technology in a bid to become industry leaders and to improve our professional lives.”

Although for some it might sound too far-fetched and speculative, in the near future we will share a world with robots. Given the state of development, if correct measures are not taken, then the future might not be much different from what has been depicted in the Terminator movie series. Therefore, we will need rules and procedures to address such issues as safety, liability, privacy, or legal personality for artificial intelligence (AI). This vision would need consideration at different levels, including the asking of difficult ethical questions. We cannot forget that at the end of the day we want to shape a better future that will expand our understanding of what is possible. The crucial role of lawyers in this endeavor will be to pave the way to “singularity,” where humans and robots will share spaces and collaborate closely.

Certainly, the fascinating topic of robotics/AI, given the significant public attention currently devoted to it, will soon be covered by lawyers in order to fully exploit its economic potential and to guarantee a standard level of safety and security.

We are already hearing about the concept of machines owning themselves. That would trigger yet more legal issues related to inheritance or insolvency law, to name just a few. Regulatory standards for robots must be meticulously planned – and legal professionals will need to take the lead on setting this legislation. To do that successfully, however, lawyers will need to have a much greater understanding of this fast-evolving field than they do at present. Only when equipped with knowledge and skills can we conclude how to move forward, especially as regards legislative measures.

“Unfortunately, those trends are not reflected by advancements in either the management models used or in management decision-making ability.”

There is little doubt that technology is having a huge impact on how we live, work, and play – and indeed, it blurs the lines between the three. Like many other sectors, the legal world – and how law is practiced – has been dramatically affected by the advances in technology. We can either embrace it or ignore it – in other words, embrace disruption or be disrupted. If we choose the latter, we may end up standing still while everyone goes forward. Legal professionals who want to thrive in modern business must lean towards technological transformation.

The great news is that lawyers have the tools at their disposal to enable this change. The digital revolution offers us the chance to compete, and it provides law firms and legal departments with the ability to transform into something much more exciting. The legal profession will not disappear, but it will surely change due to technology. This shift will most probably trigger new forms of what being a lawyer means. The sooner we accept it as the new normal the better off we're going to be! After all, wouldn't it be nice to have an AI legal assistant around that operates within legal and ethical boundaries that have been set forth by the sovereign? There's no doubt we are living in “interesting times,” as the Chinese used to say.

Tobiasz Adam Kowalczyk
Head of Legal at Volkswagen

TECHNOLOGY AND ITS IMPACT ON THE LEGAL FUNCTION



You'll read in this issue stories from other colleagues' experience - that is, stories from the past. I will try a different approach and will give you instead a story from the future. This will be about how technology helps with resource optimization – which is what those with a less rich vocabulary mean when they say “doing more with less.”

In fact, if we want to see what success will look like for our legal departments in the field of resource optimization, we should probably take this expression to its logical conclusion: the pinnacle then would be to do “Everything with Nothing!”

So, here's my suggestion for the next vision of the Legal Department: A Legal Department without Lawyers.

For those of you laughing, need I remind you that we already have cars without drivers? I guess you are not laughing any more ...

And maybe you have heard about ROSS? ROSS is the first artificially intelligent lawyer, hired last year by the Baker-Hostetler Law Firm. You ask questions in plain English and ROSS reads through the entire body of law before returning a cited answer, monitors the law around the clock to notify you of new court decisions that can affect your case, and narrows down to only the most highly relevant answers. He also excels in writing memos.

Wouldn't that be fantastic? I can see how ROSS, or his cousins when they are ready, will be a perfect lawyer for our in-house legal departments: He (or is it She?) would be able to review thousands of contracts requiring approval at the blink of an eye, or go through the hundreds of daily emails, prioritize them, and respond in minutes (having of course



gone through the full chain of previous emails on the subject). Or, even better, attend a full day's meetings without a yawn, meticulously taking notes, checking for legal compliance of projects on the spot. And don't get me started on what a piece of cake a due diligence assignment would be for ROSS.

“If we want to see what success will look like for our legal departments in the field of resource optimization, we should probably take this expression to its logical conclusion: the pinnacle then would be to do Everything with Nothing!”

Amazingly ROSS would do all these using a casual, understandable language – which is usually quite a challenge for

any one of us...

And, wait, there's more good news! ROSS would never ask for a salary increase, a promotion, or moral recognition. ROSS would not care about health insurance, child-care reimbursement, employee stock options, and couldn't care less if the cafeteria offers free food or not. (Although he might be interested in a company-owned driverless car). Talk about resource optimization, right?

“The only downside I see is that you can't have a good joke about an artificially intelligent lawyer. But I'm sure we can manage with fewer lawyer jokes, right?”

I am pretty sure that all CEOs will appreciate the warm friendliness of an artificially intelligent lawyer. Investors and Regulators will be extremely happy to know that legal advice is being provided not by fallible humans but by cost-efficient and all-knowing ROSSes. Our non-lawyer colleagues – our internal clients – will be excited to interact with cyber attorneys, tell them about their needs, and receive the most logical of answers.

Certainly, no one will care that their most trusted business partner will not have what Richard Susskind, the author of a book titled *The End of Lawyers?*, calls “The Moral Capability”, where professionals take responsibility for what they do and are driven by a sense of right and wrong.

And what's better, when you take risks that could even lead you to jail, than to consult a machine – sorry, an artificially intelligent counsel? ROSS will surely have a risk matrix assessment tool which would far exceed the capabilities of the thoughtful risk taking approach we use – and clients will just love this.

So, back to my vision: Let's optimize the most precious of our resources – ourselves – not by improving our technical and soft skills, not by employing better techniques, not by aligning with the business needs nor by working more efficiently with external counsel, but just by eliminating us altogether.

The only downside I see is that you can't have a good joke about an artificially intelligent lawyer. But I'm sure we can manage with fewer lawyer jokes, right?

Stathis Mihos
Legal Director, Greece, Cyprus & Malta at Pfizer

TECHNOLOGY: TOOL OR REPLACEMENT?

“The Solution? Technology, of course. One of the useful tools is the Flesch–Kincaid Readability Test: A test developed over 30 years ago to indicate how difficult a passage in English is to understand.”

More than 20 years ago, I was introduced to the Sophists Aristotle, Socrates, Euripides, Plato, and Protagoras: The first lawyers of the world.

“Man is the measure of all things,” remember?

I was taught from early beginnings, that “it is equally possible to affirm and to deny anything of anything,” that “law and morality are themselves natural developments, necessary for human survival and the growth of civilization,” and the relativity of truth of all judgments.

Sophists used their considerable wealth of knowledge, making correct use of the language, to persuade, accuse, or defend people and ideas.

The use of this proper relationship between language and knowledge made the Sophists popular; Hated or loved, Sophists contributed to democracy the propositions that

every person has the freedom of speech, the right to have his/her ideas heard, the right of defense, and the presumption of innocence. Such principles, which now form the base of our society, were created in Ancient Greece.

Yet, these days, it’s common to hear complaints about the contracts lawyers draft that: “It was all in legalese, with no spacing between paragraphs ... It was just a huge wall of type.”

The Solution? Technology, of course. One of the useful tools is the Flesch–Kincaid Readability Test: A test developed over 30 years ago to indicate how difficult a passage in English is to understand. Although these tests were designed initially to assess the difficulty of technical manuals, they are now used extensively in the field of education. The Flesch–Kincaid Grade Level Formula presents a score as a U.S. grade level, making it easier for teachers, parents, librarians, and others to judge the readability level of various



books and texts. It can also mean the number of years of education generally required to understand a text, relevant when the formula results in a number greater than 10.

Contracts have adjusted to the new tool. Thus, one can read in some agreements, especially those involving consumers,

variations on this: “Certificate of Readability and Acknowledgment: I certify that the information shown above is correct, and the enclosed contract submission: (1) is drafted in plain language; (2) meets the minimum font type and font size requirements and (3) has a Flesch-Kincaid score that does not exceed the maximum Flesch-Kincaid score for the type of contract shown below.”

“Yet, these days, it’s common to hear complaints about the contracts lawyers draft that: ‘It was all in legalese, with no spacing between paragraphs ... It was just a huge wall of type.’”

Moreover, we see more and more titles like this: “Lawyers Could Be the Next Profession to Be Replaced by Computers”; “Technology Will Replace Many Doctors, Lawyers, and Other Professionals”; “Lawyers are Being Replaced by Machines that Read”; “Why Hire Lawyers? Computers are Cheaper”; and “Will Lawyers Be Replaced by Robots?”

Put another way, I am reminded of an article that recently appeared in the online Quartz publication, reminding us that “lawyers are the professionals everyone loves to loathe. Jokes about attorneys abound, and Shakespeare’s line from Henry VI remains a cultural favorite: ‘The first thing we do, let’s kill all the lawyers.’ Soon, that dream may come true, and machines will be the ones to do it, as academically trained attorneys are increasingly being replaced by technology to analyze evidence and assess it for relevance in investigations, lawsuits, compliance efforts, and more.”

Survival in the battle with technology lies within us: We should go back to our roots, put our knowledge to use, and use technology as a tool, not as a replacement. Otherwise, as the author of the article on Quartz noted publication noted recently: “The better the world gets at simulating the outcome of your labors, the more redundant you start to appear.” One day then, the publication predicted, even John Roberts, Chief Justice in the US Supreme Court, may be replaced by Chief Justice Robot.”

Bogdan Plesuvescu, Executive Director & Chief Legal Officer at Banca Transilvania

HOW GENERAL COUNSEL CAN WEATHER THE DIGITAL STORM



EY is one of the four largest professional services networks in the world, together known as the “Big Four.” For a long time, the professional services industry was viewed as traditional and conservative, with the first professional services provided by legacy firms more than 110 years ago. However, it is undergoing fundamental changes today – the digital disruption poses challenges to all industries, and the professional services sector is no different.

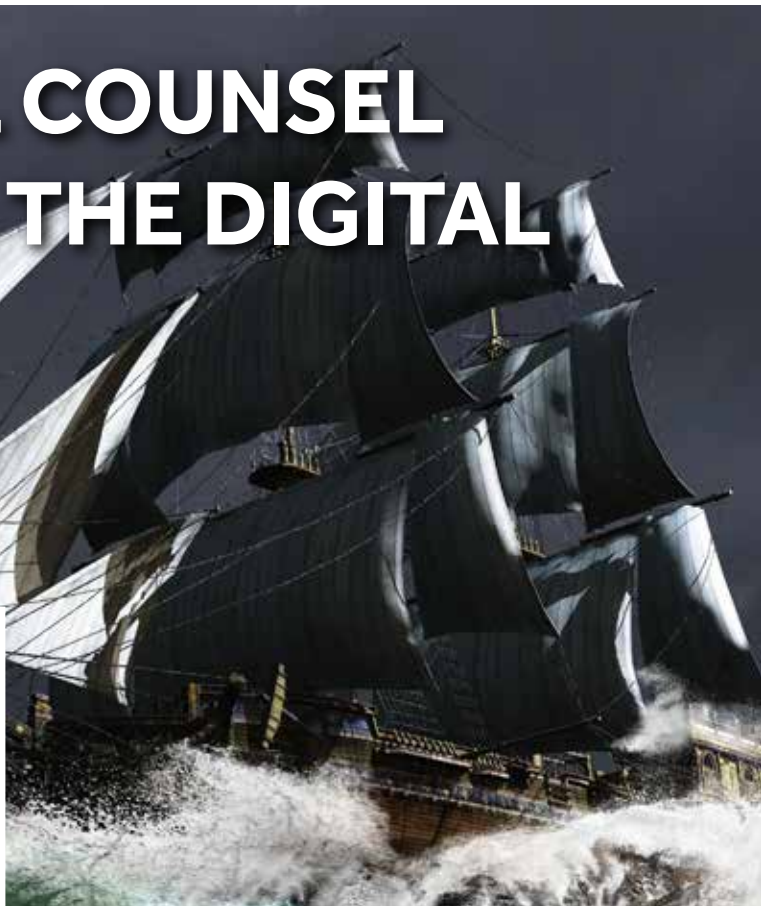
We are expanding our service offerings to tap into new areas, and our support for clients is no longer limited to auditing financial statements or providing transaction and tax advice. Today, our services may include the development

and licensing of sophisticated business software or the provision of web-based tools or smartphone applications. Data privacy and cybersecurity are also increasingly dominating our agenda. In the CIS region, Russia and Kazakhstan have recently adopted stricter regulations around data privacy.

Both regulators and clients are becoming more and more concerned about data protection issues. The dramatic changes we can now see in both the business and regulatory landscape have a number of significant consequences for our in-house legal department, as we have to face new challenges together with our industry.

For example, our standard engagement agreements have become too “tight” to accommodate the specifics of our new services, and we have modified our templates to adapt them to our new digital offerings. Today, provisions related to software development, licensing, IT support, and other activities that used to be in the province of the IT industry, rather than professional services, are often embedded in our service agreements. We also now have to ensure that data privacy and information security concerns are taken into account in our contracts.

Correspondingly, the new tasks set before in-house lawyers require a set of skills, experience, and knowledge that would





be inconceivable in the past. If three years ago someone within the firm had asked me to draft a software license agreement or give advice on a cross-border data transfer, I would not have hesitated to refer the matter to a specialized external law firm. Today such an approach does not seem feasible, both from the operational and cost-saving perspective; we need to have the respective capabilities in-house.

What should a General Counsel's response to these challenges be to remain a trusted business advisor for our internal clients? First, it is crucial to have the right talent on the in-house team. Hiring lawyers from the professional services industry or financial sector would have been the right choice several years ago. Now I'd rather look at applicants with experience in the IT or FinTech spheres. Having at least basic knowledge of data privacy and IP laws has become an absolute must nowadays, so a Head of Legal should make sure new hires have it.

Second, having just one subject-matter expert in IT, IP, or data privacy matters in your team is no longer sufficient – you should make sure the relevant expertise is shared with colleagues through practice groups and internal trainings.

Third, regulations and business practices are constantly changing, so General Counsel should make sure that their

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✓ **Just one expert in IT, IP, or data privacy matters in your team is no longer sufficient**

✓ **"General Counsel should make sure that their teams keeps up with what is going on"**

✓ External trainings

✓ Learn from knowledgeable and experienced colleagues across the entire EY network

✓ We keep in touch with our IT and Information Security people

✓ We monitor the briefings, memos, and other communications from regulators

✓ Maintain relations with colleagues in both our industry and other sectors

✓ Events and bring external lawyers to speak at our internal trainings

teams keeps up with what is going on in the relevant field. We must be connected and insightful. For us in the EY CIS General Counsel's Office this means that we make every effort to utilize the expertise available within and outside our global organization. In addition to external trainings, we communicate with and learn from knowledgeable and experienced colleagues across the entire EY network. We keep in touch with our IT and Information Security people. We monitor the briefings, memos, and other communications from regulators to understand the regulators' opinions and to be able to anticipate changes in the relevant areas. It also helps a lot to maintain relations with colleagues in both our industry and other sectors – such cross-industry knowledge exchange can bring numerous fresh ideas. Last but not least we try to benefit from events held by reputable external law firms and bring external lawyers to speak at our internal trainings, which helps provide access to cutting edge expertise and knowledge.

That being said, I must confess I am strongly convinced that today's General Counsel should always look to the future: In the quickly changing times we live in, what may sound like science fiction today can land on your desk as a legal matter tomorrow. It is our professional duty to be prepared for this.

Alexey Statsenko
Regional General Counsel, EY CIS

ON ROBO-LAWYERS AND PROGRAM-BASED LAWYERING

The reasonable reduction of costs is deemed an obligatory tactic of doing business. In this paradigm, performance of legal work by program, instead of lawyers, is considered to be beneficial. Such an approach can be reasonable if the protection of the employer's interests is guaranteed to stay at least at the same level. The methodology seems obvious: automation of legal work, use of online services and blockchain systems, and solutions based on artificial intellect.

The automation of legal work usually implies dismissal of lawyers and their replacement with software. However, it very seldom leads to the results experienced by Sberbank, the largest Russian bank. In 2016, Sberbank launched a robot lawyer making cases based on paper documents; this measure entailed the discharge of 3,000 lawyers. Sberbank says some of the discharged employees will undergo a re-training program; those who cannot be employed will be dismissed. They confirm the sense that the more actively these robots are developed, the more specialists will be re-trained and/or dismissed.

This threat is mainly to legal employees performing unskilled activities. Now, individuals wishing to solve simple legal questions may electronically file claims (for instance, against an insurance company) or appeal violations in the sphere of state orders. They can also use e-assistance in business registration – checking the chosen company name and taxation system – and find online consulting on standard issues and the filing of a suit.

Simultaneously, lawyers are provided more sophisticated tools as well, such as those providing an automated legal re-

view of contracts. Lawyers provided with such technology can upload draft contracts, see them automatically analyzed by algorithm, which – with the help of machine learning and linguistic text recognition utilities – can identify weak points in the document (for example, to find excessive penalties for delayed payments).

“The technology of blockchain is intended not to replace the dismissed, but to eliminate the shortage of expensive qualified specialists.”

The application of the advanced services in the confluence of jurisprudence and the smart economy are also of governmental interest. Thus, Russian Prime Minister Dmitry Medvedev recently instructed ministries to consider using blockchain technology in the Russian economy. Medvedev noted that large banks, corporations and some states already use the tool. “The technology is special, I remind you, as it excludes the presence of proxies,” he said. “The authenticity of operations is confirmed by the network participants themselves, since there is no single repository of information, it is all broken up into blocks, and it is impossible to



“In 2016, Sberbank launched a robot lawyer making cases based on paper documents; this measure entailed the discharge of 3,000 lawyers. Sberbank says some of the discharged employees will undergo a retraining program; those who cannot be employed will be dismissed. They confirm the sense that the more actively these robots are developed, the more specialists will be retrained and/or dismissed.”



rewrite this information without the knowledge of other persons.” Medvedev also added that blockchain could help “get rid of excessive bureaucratization.” As for labor productivity, there is a shortage of qualified personnel in Russia, he said, so the authorities will both help citizens to use their potential and engage specialists from other countries. Thus, in this case, the technology of blockchain is intended not to replace the dismissed, but to eliminate the shortage of expensive qualified specialists.

Finally, an artificial intellect, promising in its legal scope, has begun its application.

Global law firm Baker & Hostetler announced the “hiring”

of a robot lawyer created by ROSS Intelligence. The system – nicknamed “Ross” – will be employed in the law firm’s bankruptcy practice, which currently employs close to 50 lawyers. Ross can understand questions and respond with a hypothesis backed by references and citations. It improves on legal research by providing users with only the most highly relevant answers rather than thousands of results that would otherwise be needed to sift through. Additionally, it monitors current litigation so that it can provide notice of recent court decisions of potential relevance. It continues to learn from experience, gaining more knowledge and operating more quickly the more it is interacted with.

There is a tendency to automate legal work and reduce its cost in areas which do not require qualified specialists. However, the majority of consumers are not ready yet to pay for the services of robots, as there is a lack of confidence on their part. Still, everyone recognizes that it is coming in the future, and the market is waiting for the changes. There will be only a few law firms – legal boutiques – serving customers, while robots, automated banks of common solutions, remote services, and artificial intellect and specialized systems will occupy a significant share of the market.

There remains only one question: Will the hourly rates for robots differ from those for human lawyers, or will the robots conclude that unequal pay is discriminatory?

Alexander Kotler
Director of Centre for Legal Support at FSUE “NAMI”

IS SOFTWARE EATING THE LEGAL PROFESSION?

“Software is eating the world,” observed entrepreneur and Hewlett Packard Enterprise Board member Marc Andersen in his influential Wall Street Journal essay half a decade ago. Software’s appetite still seems insatiable as it continues to digitize bigger and bigger chunks of our analogue world. Hybrid cloud and edge computing, photonics and persistent memory, virtual and augmented reality, and artificial intelligence (AI) are the innovations that will harness the digital imprint of our reality for our benefit.

Ours is arguably among the most ancient of professions. Essentially, it is about telling right from wrong and conveying our judgment eloquently and subtly, mostly as advocates on behalf of others. Is software eating the legal profession? It has not yet done to law what it has, in conjunction with robotics, to assembly line work. Still, software has already made significant advances in transforming the way we work and as AI and the computing power behind it continue to gain in sophistication and strength, technology’s full impact on our profession is still ahead.

Three decades ago the legal profession was almost entirely analogue. Lawyers had to read and memorize the codes and court cases and mobilize this data with their brains while advising clients in face-to-face meetings or plead in court, correspondence was paper-based, and fax machines provided for speed. The legal education I went through (or had to endure, I should rather say) entirely mirrored this reality by valuing memory above all. We could say that this was the era of ultimate personal computing.

Digitized codes, laws and court practice, powerful search engines, the Internet, e-mail and MS Word, version control and comparison, and mobile communications have all quickly infiltrated lawyering with the same dramatic impacts as in other professional fields, and our lives in general. If you haven’t yet tried using Google when under time pres-

sure for advice on a special topic, try it, and you will be pleasantly surprised at how much free, high-quality writing is out there by trustworthy authors.

“The enhanced situational awareness that more accurate and rapidly accessible data can bring is achievable across the board.”

The largest international law firms were probably the first to go beyond the use of these widely available innovations and implement information technology solutions tailored to law. They introduced firm-wide private cloud-based computerized filing and time keeping systems integrated to an extent with Outlook, MS Word, accounting and billing systems, as well as automated template creation. The benefits were obvious. Confidential information was now kept in secure datacenters, all digital information was tagged and organized, trackable and transparent, and the first drafts of complex financing or M&A contracts were drawn up for specific transactions in no time.

IT infrastructure, including the software behind these systems, required a very significant investment. It is therefore not surprising that only the legal departments of large multinationals were able to follow suit in implementing similar solutions. The challenge for in-house teams is to guarantee rapid and high quality service for business and other functions more cheaply than it would cost to outsourcing it, both around the world and across disciplines.



While usually disliked by in-house attorneys, time tracking gives leadership insight into how resources are deployed and reveals under-deployment or overstretching both regionally and by discipline. It can also serve as the basis for internal cross charging of costs, something that the consumers of in-house legal services probably don't like, but which could nevertheless further improve the efficiency of resource use. In-house clients would not engage counsel for low value work or attempt to use them as administrative staff (e.g., for filling in tender forms). This would free up legal resources which could be saved, thus resulting in the reduction or more effective deployment of staff; *i.e.*, higher value work would receive more attention.

The enhanced situational awareness that more accurate and rapidly accessible data can bring is achievable across the board.

Some CRM systems have modules for lawyers to upload and modify draft documents, create legal opinions, and keep copies of executed digital documents or scans of hard copies with wet ink signatures. Actually, hard copies and wet ink signatures are losing ground in contracting, not necessarily to cryptographic electronic signatures, but instead often to simple electronic quotes and purchase orders which usually refer to the general contracting and procurement terms and conditions of the parties. Therefore, when suppliers and customers negotiate a frame contract, they usually include a clause overriding any reference to both parties' general terms and conditions to block out interference with the default settings of their quoting and purchase order-generating systems.

A case management system provides case managers, leadership, and finance departments with up-to-date data on litigations including what is at stake for their companies legally and financially, as well as providing information about the actual and expected costs of defending or pursuing cases.

Corporate data such as authorized signatories, shareholders, tax numbers, and business addresses of companies belonging to the same international group are integrated into subsidiary management systems.

Internal investigations are overseen with similar tools, allowing for both digital record keeping and efficient management level coordination, while business amenities approval and tracking tools provide control over the implementation of corporate policy, as well as a transparent database for both internal and external audits.

While technology has decreased the need for qualified lawyers, administrative staff, and paralegal hours through streamlining and speeding up processes – allowing you now to do more with less – paradoxically, it has increased administrative tasks for attorneys. The fraction of a full-time administrative position that this work represents today has been taken over by lawyers.

Today's widely available tools are good in capturing and presenting data and basic analytics but as AI offerings mature, we should expect to see more benefits from the captured data. The AI behind Google's free online translator might seem humble based on the results it returns when compared to a skilled human translator, yet it is a valuable tool in the hands of a regional attorney for quickly assessing a foreign language document. AI is reported to efficiently process case law and provide useful analysis of outcomes.

I suspect that AI is a good solution for analyzing draft contracts and come up with suggestions for their approximation to client expectations based on pre-set preferences, drafting history, the economics of the given transaction, and so on. These capabilities would come in handy for processing lower risk and low-complexity contracting work in supporting human decision making. However, I remain skeptical as to whether we are willing to entirely relegate the human experience of deal making to machines, blindly trusting their judgment. I think we are now somewhere half-way in the digitization of the legal profession and the crossroads for deciding how much more fundamental machine interference we want to see are getting closer. In the future our profession, both in-house and in private practice, might need fewer people as a result of computers taking over more tasks and, and those tasks remaining in human hands may not be remunerated as highly as now. However, I think that lawyering will remain a fundamentally human activity based on human judgment, at least in the second instance.

Daniel Szabo
SEE Legal Counsel at Hewlett Packard Enterprise

THE USE OF NEW TECHNOLOGIES IN MODERN BANKING AND THEIR IMPACT ON THE LEGAL FUNCTION WITH A SPECIFIC OVERVIEW ON LEGISLATION IN REPUBLIC OF SERBIA



In a world where technological innovation grows so fast, a need to transform banking services from the classic model in which the client's presence is required in the bank's premises leads us to the new form of selling of the classic bank's products.

The basic principles for this new form should be: a) fast communication with potential clients; b) the ability to identify clients on-line; and c) the ability to conclude agreements with clients on-line. So, the final result will be digital customer acquisition and digital lending, by taking advantage of modern technology.

Knowing that legislation and court practice do not always keep pace with life in all segments, we as in-house legal counselors are challenged to establish the model for this new way of banking business.

Let's start with the problems that we face, the targets that we want to reach, and the analysis of relevant market legislation in the Republic of Serbia.

Our targets are opening accounts on-line and on-line lending to both existing and new clients of the bank. They are physical persons, wanting to use electronic signatures, electronic documents, and/or any other alternative digital channels. We also need to provide on-line identification of the client, taking into account the relevant Know-Your-Client (KYC) procedure.

Opening an Account with the Bank

According to the Law on Payment Systems that is in force in the Republic of Serbia, an agreement to open an account with a bank has to be in written form. Further, the Financial Services Consumers Protection Law requires banks to inform potential clients in advance of all conditions of the relevant agreement as well as to provide all necessary documents which should be signed by the client including, without limitation, an example of the subject Agreement, the General Terms and Conditions, and the bank's tariff.

The Financial Services Consumers Protection Law allows documents to be rendered to the client on request in electronic form, by mail, or in a durable medium, but finally the



Agreement has to be signed by the client in writing.

Conclusion of the Loan Agreement with Bank

In accordance with the Law on Contract and Torts and Financial Services Consumers Protection Law that are in force in Republic of Serbia, a loan agreement, agreement on credit card issuance, overdraft agreement, and other similar agreements regarding bank services must be concluded in written form. Further, the Financial Services Consumers Protection Law obliges the banks to inform potential clients in advance of all conditions for conclusion of the subject agreements as well as providing all necessary documents which should be signed by the client, including the subject agreement, the general terms and conditions, and the bank's tariff.

The bank is also obliged to inform potential clients in writing of all possible costs (current and future) related to the subject agreements. Those costs include the bank's interest rate, all bank fees, and fees of external third persons (for example fees for collateral establishing, fees for collateral execution, *etc.*)

The Financial Services Consumers Protection Law allows documents to be rendered to the client on request in electronic form by mail or in a durable medium, but finally the Agreement has to be signed by the client in written form.

The review of the legislation of the Republic of Serbia leads us to the main question: How to create a document

that is recognized by law as a "document in written form?"

In principle, the Serbian Law on Electronic Documents prescribes that where a regulation required a legal act to be in writing to be valid, the relevant electronic document shall be signed with a qualified electronic signature. Theoretically this means that, if the agreements mentioned in points I and II above are made as electronic documents and are signed

The new form of selling of the classic bank's products



by the clients and the bank by qualified electronic signature, they can be treated as documents in “written form.”

“The review of the legislation of the Republic of Serbia leads us to the main question: How to create a document that is recognized by law as a ‘document in written form?’”

Nevertheless, neither the supervisor of the banking system in Serbia nor the protector of financial services consumers, in their interpretation of the relevant legislation, recognized electronic documents as documents in “written form” as required by the Financial Services Consumers Protection Law. And there is no court practice regarding this issue at all, specially not in respect of validity, legal binding and on execution of such document.

Thus, it appears that a new regulation is required to address this issue – to provide that agreements for banking services may be concluded on-line by means of electronic documents and qualified electronic signature.

KYC Procedure and Identification of Clients Online

The Serbian KYC legal framework is regulated by the Law on Prevention of Money Laundering and Financing of Terrorism and related by-laws. And under this Law, client identification is mandatory before any business relationship can be established. A “business relationship” between a customer and the bank based on a contract regarding the business activity of the bank that is expected, at the time the relationship is established, to have an element of duration.

Serbian law requires that data be determined from an inspection of a personal identity document in that person’s presence. If it is not possible to obtain the required data from the document, missing data shall be obtained from another official document. Data that cannot be obtained from such documents for objective reasons shall be obtained directly from the customer.

If the bank is unable to act in concordance with the regulation, then it shall refuse the offer to establish a business relationship, as well as the carrying-out of a transaction, and it shall terminate the business relationship if a business relationship has already been established.

Under the conditions set out by the regulations, the bank may also identify and verify the identity of a customer who is a physical person, or his/her legal representative, based on a qualified electronic certificate issued by a certification body in the Republic of Serbia, or based on a foreign electronic certificate which is equal to its domestic counterpart, in accordance with the law governing electronic operations and electronic signature.

In addition, identification and verification of the client’s identity based on an electronic certificate obliges the bank to ensure that the customer’s first transaction be carried out from the account opened by the customer in his presence.

Data protection requirements are a separate issue for banks. The processing of personal data in the Republic of Serbia is regulated by the Law on Personal Data Protection, which defines “personal data” as any information relating to a physical person and “data processing” as any action taken in connection with data, including the collection, recording, transcription, multiplication, copying, transmission, searching, classification, storage, separation, crossing, merging, adaptation, modification, provision, use, granting access, disclosure, publication, dissemination, recording, organizing, keeping, editing, disclosure through transmission or otherwise, withholding, dislocation or other actions aimed at rendering the data inaccessible, as well as other actions carried out in connection with such data, regardless whether those actions are automated, semi-automated, or otherwise performed (hereinafter referred to as “processing”).

Free movement of customer personal data is not possible according to local law, and it can only be communicated or transferred on the basis of the customer’s written consent.

A Data Protection Officer is not prescribed by local law as a mandatory function within the obligor’s organization. There are no obligations according to local law to prepare an internal act on personal data protection topic.

While we are waiting for new legislation to address all open issues and/or for court practice to resolve the same issues, the banks are running for new clients and acting to address client needs for something new. Therefore, banks’ in-house legal counselors are challenged to establish clear procedure for on-line identification of a potential client by taking advantage of smart mobile phones (such as identification via a client’s “selfy” pictures) and to find ways to sell their products without requiring their physical presence in bank premises. This will be the “pioneer job” on Serbian banking market and will result in an immeasurable advantage for the first bank able to solve all open issues. We lawyers are called to run this “battle” from the “first battlefield’s line.”

Dusan Mitrovic
Head of Legal Division at Raiffeisen banka a.d.

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DOING BUSINESS BUT KEEPING PERSONAL DATA SAFE

As personal data privacy is increasingly considered an important human right deserving protection, and with the new EU Data Protection Regulation to become enforceable in Romania as of May 25, 2018, it is becoming more and more important for corporations not only to observe the general data protection rules on commercial transactions but also to ensure full internal legal and technical compliance for all employees having access to any personal data processed internally.

It is thus necessary for Heads of Legal Departments to dedicate extensive time towards legal reviews and assessments in order to both establish and to ensure awareness of data protection rules and policies to be observed by each department of the company as part of the company's daily activity.

In view of compliance with data protection legislation, a Legal Director must know all the risks associated with the specific activities of the company, including those related to the transfer of personal data outside the EU. Also, holders of top legal positions need to be involved in the company's business strategies to be able to understand the potential risks and to issue compliance guidelines. The Legal Director's role increasingly requires extensive expertise in general IT technical & software operations, in the technical security measures to be placed on the company's servers & computers storing the personal data, and in drafting and enforcing policies applicable to employee access to personal data.

The Legal Director, always working jointly with his/her IT Department, must create sound legal data protection policies and ensure permanent legal supervision of the data protection rules in relation to the activities of his/her company. As such, the subjects of the personal data protection policies are not only the clients or suppliers or other collaborators of the company but also the company's own employees. One of the most sensitive areas related to processing of personal data relates to marketing campaigns, and special attention must be paid to obtaining the consent of targeted individuals in various marketing activities, whose personal data must be protected against unauthorized or accidental access, alteration, transfer, disclosure, or loss.

In accordance with the latest data protection regulation adopted at the EU level and automatically enforceable under Romanian law, starting in May 2018 companies which process personal data will need to appoint a Data Protection Officer in certain cases, such as in processing operations which, by their nature, scope, and/or purpose require regular and systematic monitoring of the data subjects on a large-scale basis. Because of these corporate obligations, of course, a close and permanent collaboration between the Head of Legal and the Data Protection Officer is envisaged to ensure the observance of the data privacy rules and internal regulations and for solving various potential privacy issues.



“Starting in May 2018 companies which process personal data will need to appoint a Data Protection Officer in certain cases, such as in processing operations which, by their nature, scope, and/or purpose require regular and systematic monitoring of the data subjects on a large-scale basis.”

Penalties for infringement of data protection obligations have been significantly increased, with sanctions rising as high as EUR 10 million or up to 2% of total annual worldwide turnover of the data collector. For infringements of basic processing principles (such as proportionality, legitimacy, consent, *etc.*), the rights of the data subject (such as access, the right to be forgotten, *etc.*), rules of internal data



transfers, or noncompliance with an order of the Data Protection Agency, the fine is EUR 20 million or up to 4% of total annual worldwide turnover.

In addition to the penalties that may be imposed by the Data Protection Agency in case of breach of data privacy, companies that do not implement safe data protection policies can also face civil claims involving significant demands for compensation from individuals whose privacy rights were not observed during companies' commercial activities.

In consideration of all the above, a major task of the Legal Department is ensuring the ongoing observance of data privacy regulations in all areas of a company's activity.

Mihaela Marin
Head of Legal Department at Anchor Grup SA

HOW TO PREPARE FOR THE NEW EU PRIVACY LAW? TIPS AND SUGGESTIONS FOR GDPR COMPLIANCE

As it is widely known, the General Data Protection Regulation (216/679 (EU)) (GDPR) was announced on April 27, 2016 and will be applicable as of May 25, 2018. Simultaneously the 95/46 EC directive (the “Directive”) will be set aside. Although the GDPR’s main concepts and principles are much the same as those of the Directive and thus the national data protection acts, the GDPR does prescribe certain new obligations (such as the DPO, the right to data portability, *etc.*) and a much higher limit of fines, suggesting that privacy will be taken more seriously in the future.

As the effective date approaches, more and more companies are having to consider how to prepare for the new regulation. There are multiple memos, lectures, and professional events designed to draw the attention of general counsels and in-house lawyers to the rules which have to be implemented within their organizations in the coming year. In order not to be lost in this jungle of information and highlights, it is important to set up your own systematic plan for how you will carry out this task. In this article I would like to give you some tips and suggestions in this regard.

The UK Information Commissioner’s Office (ICO) summarized in 12 points the main steps that have to be taken in order to be prepared for the end of the GDPR’s lead-in period (the “Preparatory Guidelines”). The Preparatory Guidelines may be a very good starting point and may help you to think over and plan your approach to GDPR compliance. It suggests, as a first step, raising awareness within your organization to the fact that the applicable law is changing to the GDPR, and considering what this change may mean for your organization, as it is immensely important for you to enjoy the support of the top management.

Beside communicating the relevance of the GDPR within the organization, it is also essential to assess the current status of data handling across the organization. This may be done by some kind of “internal privacy audit” or “data mapping,” which includes a review of the current privacy notices, and the

way interviews are held in all particular business areas (e.g., HR, recruitment, marketing, customer care, *etc.*). As a result of this data mapping you will gain a clear picture of what kind of personal data the company holds, where the data come from, who the company shares it with, what the legal grounds and aims of data handling are, whether the methods of data handling are truly necessary to reach those aims, and what kind of technical measures need be taken to keep the data safe.

Once you have the results of the data mapping, the necessary measures to rectify the revealed shortcomings should be carefully designed. The good news is that if you are complying properly with the currently applicable data protection law then most of your practice will remain valid under the GDPR, as the main principles are unchanged from those in the Directive. Nevertheless, there may be certain issues or areas where some kind of fine-tuning may be needed. Irrespective of the quantity of the actual work, it is practical to divide the steps necessary to be taken into three main areas: 1. Substantive requirements, 2. Procedural requirements, and 3. Technical requirements.

Substantive Requirements

In terms of substantive requirements the most important thing is to make sure that all data processing being carried out has an appropriate legal basis that and that the data subject is appropriately notified of all those circumstances which are relevant from a privacy point of view (*i.e.*, the legal basis is carefully selected and identified and a privacy notice is appropriately drafted).

Furthermore, the GDPR sets out a new obligation for the data controller if the data processing is likely to result in a high risk to the data subject. In this case the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data (a “Privacy Impact Assessment” or “PIA”). Among the circumstances in which the PIA shall be carried out is when the data processing entails automated individual decision-making, including profiling processes. Although the obligatory PIA is



a new acquis of the GDPR, it existed beforehand as a “best practice,” which entailed and facilitated the application of the privacy by design approach. So within the substantial requirements it is highly recommended to carry out and document the PIA appropriately, in case such documentation is required. The code of practice of the ICO may serve as a great help both for identifying when a PIA is needed and finding out how to produce a PIA report.

Procedural Requirements

Compared to the current regulation, the GDPR places greater emphasis on the administration and documentation on the data controller side to serve as evidence that the controller is complying with the accountability and transparency principles. This means that data controllers should review and improve their internal governance and data handling processes. In this regard the first thing to be arranged is the revision or implementation (as the case may be) of an internal privacy policy, to ensure that the data handling procedure is fully in compliance with the GDPR across the entire company.

It is necessary to implement procedures which ensure that the company handles the enforcement of the individual’s fundamental rights based on the GDPR appropriately (e.g., by implementing smooth procedures for when a data subject asks for data erasure or requests information regarding the data that has been processed). These rights are the same as those that already exist under the Directive: For example, the right to have information about all data handled, the right to have inaccuracies corrected, and the rights to have personal data erased and to prevent direct marketing. However, certain rights are broadened or introduced by the GDPR, such as the right to prevent automated decision-making and profiling, the right

to be forgotten, and that of data portability. This last right is closely related to the right of access, but it differs in the sense that it ensures that the personal data be transmitted in a structured, commonly-used, and machine-readable format per the request of the data subject and thus facilitates the change between different service providers. The guideline on the right to data portability issued by the Article 29 Data Protection Working Party sets forth the main factors in this regard.

The procedural requirements also pertain to the rules applicable in the event someone intends to launch a new service, tool, or application within the organization which entails or affects personal data handling. In this case, it should be determined how the IPA will be carried out and by whom, who will be in control of the implementation of the privacy by design principle, and so on. The procedural rules also have to regulate the documentation and filing method of all privacy-related documents (such as privacy notices, consent of the data subjects, test on legitimate interest, *etc.*) in order to be accurately presented in case of a contingent authority investigation. Moreover, the privacy policy has to consider also the technical requirements regarding data storage, processing, and transmission, and the steps to be followed in case of a privacy incident (with special regard to the mandatory notification to be sent to the competent authority or to the injured data subjects). And with this criterion, we have arrived the last requirement that I wish to mention in my article: The technical requirements.

Technical Requirements

The GDPR obliges data controllers and processors to implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk. These measures include, among others, the pseudonymization and encryption of personal data, ensuring the ongoing confidentiality, integrity, availability, and resilience of processing systems and services, and the ability to restore the availability of the data in the event of a physical or technical incident. The effectiveness of these measures shall be regularly tested, reviewed, and evaluated. These requirements are primarily technical in nature and thus are mainly the responsibility of those colleagues who deal with technical issues for the company – presumably somewhere outside the legal department. However, these requirements can only be implemented and regularly reviewed with the effective assistance of the legal department and followed by the guidelines which entail the legal factors and requirements. Therefore, in this field the close cooperation of the technical and legal staffs is indispensable.

With this short article I aimed to draw attention to the importance of setting up a plan to prepare for the GDPR and to tailor it to the specific circumstances and distinctive traits of your company, and to give some guidelines and assistance regarding the factors which should be taken into account when you are planning the milestones to lead to a fully compliant privacy practice within your organization by May 25, 2018. I wish you a very successful preparation!

Eva Kerecsen
Chief Legal Counsel at NNG



RUSSIA: UNCERTAINTY OVER PERSONAL DATA LOCALIZATION LEGISLATION

You load the picture from your recent gathering of friends on Facebook. Immediately, and by itself, the website defines all the persons who are in the photo: surnames, age, habits, personal life. Everything is in the social network.

On the first day of your employment you give your employer copies of all documents proving that you are a citizen of this country and this city and that you were educated somewhere and maybe even worked. And the company, in turn, transfers that data to the dozens of organs that calculate taxes, your salary, give you medical insurance, even render a visa for a journey to Europe, and so on.

Every day we hand out our private life of our own free will or within the frame of requirements of common practice. The most interesting thing in Russia is that, even if the initiative comes from your side, the party receiving the personal data (PD) is nevertheless obliged to ask for your consent prior to processing it. Employers, doctors, banks and shops, counterparties – in all these cases your data may be used only in accordance with the specific aims for which it was provided.

The consequences for breach of this rule are real, and severe. For instance, last year Russian society lost access to the two extremely popular web-resources, PornHub and LinkedIn; the latter specifically due to the site's violation of PD legislation.

“Every day we hand out our private life of our own free will or within the frame of requirements of common practice.”

LinkedIn was shut down in Russia following a ruling that it had violated two laws in its activity: (1) It did not obtain prior consent from users for PD collection and processing, and (2) because the processing that it did undertake was executed outside of Russia, it violated the law (the “PD Localization Law”) requiring that PD collected from Russian citizens must be collected, kept, and processed first in Russia, and only then may be transferred across borders. The PD Localization law is rather new – it was enacted in September 2015.

LinkedIn, in its defense, claimed that because the company had no representative office in Russia, Russian data protection



legislation was inapplicable to it. The social network, it argued, had no “target by IP-address, location, and the Russian language switches automatically under browser settings.”

In fact, the PD protection law does not contain specific clauses that regulate its jurisdiction by territory and persons. Usually Russian legislation is limited in application to the territory of Russia, but the Internet is boundless, and much of the information on it, here and there, is untraceable. Thus, Russian state organs have established criteria for determining whether resources are “oriented” towards the Russian Federation: 1) use of the “.ru” domain name; 2) presence of a Russian-language version of the site created by the owner; or 3) any other demonstration of interest of the site owner to Russian-speaking society and/or the Russian market (such as advertising in Russian). These criteria are mentioned on the control bodies’ websites, but are not stipulated directly by law.

Similar criteria of “orientation” can be found in European legislation. For example, consumer law can be applied if a supplier on another market “by all means orients its activity to the consumer country” (p. 1 of Art. 6 of the Regulation No 593/2008 of the European Parliament and of the council on the law applicable to contractual obligations).

Since 2013 Russia became a party of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data CETS No. 108. Based upon the dispositions of the Convention, the localization rules are not applicable to non-residents of the Russian Federation who are located and acting in another country. The Convention requires that PD be used within the frame of the aims for which it was collected and in accordance with the legislation of the country where the non-resident is located. The Regulation also prohibits the creation of barriers to the flow of PD among and between the countries that are parties to it. This contradicts the current version of the PD Localization Law.

‘Roskomnadzor’s answer on the question regarding the conflict of provisions of the Convention and localization law was simple: The localization law is based on the Convention and there is no conflict.’

Unfortunately, it is unclear whether this Convention could have assisted LinkedIn. Roskomnadzor (the Russian organ overseeing PD collection and processing) sued the US-based LinkedIn Corporation. Later LinkedIn, on the appellate stage, claimed that the LinkedIn Corporation was responsible only for the processing of US citizens’ PD and was therefore the wrong defendant, as the processing of all other PD was performed by the LinkedIn Ireland Unlimited Company, located in Dublin.

Roskomnadzor’s answer on the question regarding the conflict of provisions of the Convention and localization law was simple: The localization law is based on the Convention and there is no conflict.

To this point, no party to any case after September 2015 has relied on the Convention. Partially this is connected with the fact that most of the biggest networks – including AliExpress, eBay, Booking.com, PayPal, Citibank, Lenovo, Samsung, and Uber – have agreed to transfer storage of PD to Russia. But not all; Twitter, Facebook, and Google have refused to do so. Roskomnadzor has announced in recent conferences that it will not check these companies this year but will return to the question next year.

Natalia Belova
Head of Legal at Inchcape Russia



EXTERNAL COUNSEL: EASY TO SELECT AND MANAGE? HOW TO EVALUATE THEIR PERFORMANCE?

Introduction

External counsel play an important role to an organization, when engaged. The value of their contribution depends upon their experience and expertise. Therefore, selection of external counsel needs to be done carefully. Their engagement in itself is not enough. Once selected, constant interaction with them is necessary to evaluate their performance. In this article, an attempt has been made to articulate how external counsel can be employed to the utmost benefit of an organization.

Selection of External Counsels

The process by which external counsel is selected depends heavily upon the organizational culture of the company selecting it. Many companies have a panel system allowing it to store the details of external counsels. When a necessity arises, the panel is reviewed and depending upon the requirement the appropriate external counsel is chosen.

Many organizations, however, do not maintain a panel of law firms to act as external counsel. Instead they simply look to make the best choice of external counsel for each particular job. Normally the details of external counsel and law firms are available online. Alternatively, word of mouth and reference-checking can be used to select names. These days reference books published by, for instance, Chambers and Partners are available to assist in the identification of external counsel in each particular jurisdiction. These books have details of specific industry sectors and the specialists available in those sectors.

Selection through panel, study of websites, word of mouth, reference books, or even a combination of all of these sources have their advantages and disadvantages. A panel provides certainty and saves time – especially valuable where time is an issue. Panels are drawn on the basis of interviews to determine the strengths, expertise, and experience of the various service providers. However, there is a need to constantly upgrade the panel.

Selection through other alternatives provides more flexibility to an organization, since it is not hamstrung with the legacy of a panel. External counsel can be selected based on specific requirements at a particular time. In making this selection, prior knowledge or word of mouth can be relied upon. However, a drawback is the time factor. Additionally, there is the requirement to negotiate fees, which can take up ever more time.

My organization does not have a panel. Depending upon the nature of an assignment, I engage law firms around the world on a regular basis. In doing this, I depend primarily on prior knowledge, networking, and word of mouth. Indeed, I have a list of external counsels in different locations around the world with contact details to facilitate quicker decision-making. The flexibility that this system provides is the availability of multiple options and flexibility in the negotiation of fees.

When selecting the external service provider, cultural background needs to be kept in mind to ensure smooth interaction between the parties.

Managing Counsel

It is critically important that the relationship between the legal department and the external counsel/law firm is based on inter-dependence and mutual respect. For an external counsel to be successful, he has to be provided with full information, facts, and dynamics of business so that he can add value to his assignment. Conversely, the external counsel should have the capacity to understand clearly the requirements of the client and the client's commercial necessities. This will help the counsel to provide valued advice to the satisfaction of the client. In my experience many external counsels lack this important quality. Knowledge of both facts and law are essential. Knowing facts is the starting point, understanding business realities is the next criteria, and application of law/legal knowledge to achieve the objective of the client should be the outcome. I have engaged law firms who were good at theory but not on

practicalities. Many times they did not understand the commercial necessities/compulsions of the client. On the other hand, there are external counsels who are capable enough to understand the business requirements and give their advice accordingly. This pleases the client.

Evaluating Performance

As discussed before, the external counsel has to work in tandem with the organization that engages it. In my view, the counsel should become an extended arm of the legal department of the engaging organization. From the organization's perspective, at the very beginning, it is important to identify the lawyers that will be involved in the assignment. Similarly, the lawyers should know who will be their interface at the organization. While the General Counsel usually acts as the interface, if the assignment is complex and commercial or technology driven, then the General Counsel may need to bring in other colleagues. This is required to provide a platform for an interface between the external counsel and the client for better understanding of the assigned tasks. Constant dialogue between the two sides is essential to help the external counsel satisfy the client's needs.

I firmly believe that development of good chemistry between the external counsel and the General Counsel is the starting point of the relationship. In the many complex projects involving billions of dollars of investments that I normally deal with, healthy and friendly exchanges between the external counsel and our organization are essential for the productive outcome of the matter. Evaluating performance becomes easier if the right person is selected at the right time for the right price. Evaluation does not have to be done at the end of the assignment. Rather, evaluation and monitoring go hand-in-hand, and if controlled from the beginning, can produce wonderful results.

Monitoring Counsel's Work

In my experience, monitoring the counsel's work consists of providing the right information at the appropriate time with clear directions. The last of these is key. Many times I have seen that our counsel's performance suffer for lack of information. Having said that, it must also be noted that the right questions were not asked by the external counsel, which created a sense of frustration between the parties. Constant dialogue is essential to avoid this kind of situation.

Maintaining a timeline is also very important – even more so when the whole assignment is time bound like M&A. Maintaining the timeline is possible, especially in a time bound deal, only through constant interaction between the parties. This is a complex task, especially when the deal involves multiple jurisdictions on different continents and geographical timelines. However, in today's technological age, communication at almost any time and any place is possible through video conferencing, skype, and so on. The good old days of face-to-face negotiations can be dispensed with

most of the time. And parties can sign technologically, with actual hard copy signatures to follow. This works well if there is a complete understanding between the external counsel and the General Counsel and the rest of the organization about the timelines, tasks involved, and responsibility/accountability of concerned persons. I normally ask for the identities of people at external service provider who will play key roles, including backup. Holding regular conference calls and video conferencing apart from physical meetings is also essential to maintaining contact between the external counsel and the organization.



Fixing Fees

Fixing fees is quite tricky, as it defies any hard and fast rule in today's market. It is the market pull and push that determines the fee. There is no fixed template which can be used for fee fixation. These days, when selecting law firms around the world, I normally go for a fixed fee with an understanding between the parties as to what the expectations and deliverables are. Where it is not possible to fix milestone-based fixed fees, then some kind of combined fixed and flexible fee models can be arrived at. These days hourly fees are very rarely agreed to – in fact they are being dispensed with. For fixing fees, the most important criterion is determining the scope of work at the beginning of the engagement itself. If the scope of work moves, then it is possible to re-fix the fee. In a recent long-term multi-billion-dollar project being pursued by my organization, a fixed fee at different milestones over a period of five years or so was set, which is a classic example of good understanding and relationship between the external service provider and the organization.

Conclusions

It is clear that engaging, managing, and evaluating the performance of the external service provider is like maintaining a good relationship. Ultimately it is the trust and confidence of each party in the other that matters. The relationship cannot be based on finding faults with each other. If the best is to be exerted from the external legal counsel, it is vital that both parties understand the requirements of the other clearly and interact with each other positively so that the client's objectives are satisfactorily fulfilled.

Abhijit Mukhopadhyay, President (Legal) and General Counsel at Hinduja Group

SELECTING MANAGING AND EVALUATING THE PERFORMANCE OF EXTERNAL COUNSEL: KEYS TO SUCCESS

The process of selecting external counsels is quite a challenge to management of an in-house legal department and poses unavoidable risks. It has an important effect on the department's relations with its internal clients and with executive management team members. It is a pity that in some cases this picture may be explained as "The cobbler's children have no shoes." The risks inherent in selecting external counsel may in the worst case trigger the chief legal counsel's professional liability and even directors and officer's liability when not managed and regulated properly. Accordingly, it is essential to review the specific terms to be applied while selecting the External Counsels (ECs). It is essential to perform conflict checks, review the EC's market expertise, and analyze the EC's relation with public authorities when selecting an EC, as is setting out key performance indicators in legal services agreements.

To ensure consistency in law firm relationships and to implement best practices with invoice submission and payments there should be a written process and guidelines for General Counsels (GCs) when selecting External Counsels. The most common and necessary criteria may be summarized as: conflict of interest, confidentiality, and neutrality.

Professional experience and market expertise are always keys

to identifying the best option for our companies, with price on the other pan of the scale.

A very specific and simple legal services agreement covering Key Performance Indicators and specific expectations from the EC is another key point which might be a challenge. External Counsel may propose their own terms, which they have created. However, they need to be flexible and these terms should be designed according to their clients' needs, and more importantly, provide confidence to GCs that they will obtain the best results. Communication and reporting should also be regulated and cannot be left to the normal course of business when designing the relationship. Designating a relationship partner to take responsibility for overseeing the adherence to these guidelines and designating a member of the legal department as our relationship manager with the EC has been quite useful and is recommended.

Conflicts

Large, diversified corporations consisting of many operating companies which do or have done business at multiple locations/business lines under separate and distinct names may incur different kinds of conflict of interest risks. They may be



working with the same EC's as opposing parties and this may not be seen from the surface. A preliminary conflict check is highly recommended in this context, and where any conflict arises, it must be promptly brought to the attention of the legal department.

A common issue that we have experienced in selecting external counsel in developing countries is seeing them attempt to win clients by exploiting relationships with executive management team members whom they know socially. This can generate a big and serious conflict of interest problem, in part by weakening the General Counsel's position and his/her relation with outside counsels. Thus it is essential to review the existing relations periodically for compliance purposes.

✓ **Conflict of Interest**

✓ **Confidentiality**

✓ **Neutraiiity**

✓ **Professional Experience**

✓ **Market Expertise**

✓ **Price**

Evaluating Performance

From time to time hours which have been charged by an EC may not be reasonable or may be higher than expected. In addition more than one counsel may be working on the same file and double/triple charging may occur, which demotivates our relationship. Your file may be your most important project – but this may not be the same for the EC who is serving for several clients, and you may be served memos or legal opinions prepared by junior counsels – and this also harms the relationship. Therefore it is essential to keep an eye on the content of work being done and legal costs and to inform the EC of any unexpected costs or other sources of disappointment. Hence we know they are always keen on finding solutions.

No Need to Be Too Conservative

GCs and legal departments should also review their substantive legal practices and operational needs and consider whether some of the work they have been outsourcing to ECs can be performed by lower-skilled internal resources. Billing arrangements and frequency, time-recording details should also be agreed in the agreement to avoid additional costs and legal budgeting purposes. There may be variable billing strategies available and putting gaps may also be helpful in managing costs.

We Are In the Same Boat

EC's are by all means our business partners. We should also treat them, through supportive actions, such that "we are all in this together." This will result in improved responsiveness, easier issue and deal negotiation, risk sharing, and co-investment, and this will empower GCs and the legal function's position.

Gokce Turkoglu
Legal & Compliance Director at Marsh Turkey

SELECTION, MANAGEMENT, AND EVALUATION OF AN EXTERNAL CONSULTANT

Nowadays, in many countries, the demand for legal outsourcing is increasing in response to the rapid development of certain business activities, and the necessity to hire an external consultant can arise in a company of any scale, status, and activity, whether an in-house lawyer is present or not.

Often, mandating an external consultant enables a company to obtain additional work resources quickly, provide legal support for unusual tasks and projects, and to obtain a look “from the outside” at its internal processes.

Throughout my career, I have been both an in-house lawyer and an external consultant for many companies, and as a result I can say that the parties are not always satisfied with the result of work performed by an external consultant on a project or task for which he/she has been retained, and the relationship does not always result in further efficient cooperation.

In my practice, I have seen relationships with outside lawyers turn so negative that even before the end of formal cooperation we all knew that we would never return to him again.

Choosing an external consultant (and this may be an independent consultant, attorney, lawyer, or a law firm with a team of lawyers and attorneys) is a very important decision. In my opinion, the right choice of an external consultant is 50% of the success of further fruitful cooperation.

So, when choosing an external consultant, we can use the following criteria:

1. The Purpose of Attracting an External Consultant

In order not to make a mistake in choosing an external consultant and to instruct him/her correctly, the company must clearly define the goal for which the external resource is attracted, what the expected result of the cooperation is, and what the key conditions that must be observed are (for example, applicable mandatory deadlines, and so on).

2. External Consultant's Reputation

The external consultant's reputation is of great importance not only in terms of the consultant's professional competence, but also in terms of the risk of confidential information about the company's internal processes leaking. For an external consultant, reputation is the main asset and, as a rule, outsourcing companies (including law firms) cherish their reputation and can't afford to lose the client's trust.

3. Availability of Recommendations for the External Consultant

When searching and selecting an external consultant, various sources can be used, including websites of legal companies and other legal portals and recommendations from partners or others who have had positive experiences with a certain external consultant.

I think that the best advertising for an external consultant, and in particular a lawyer, is the recommendation of another client, who was pleased with the services rendered to him. However, one should not blindly trust such recommendations, since the lawyer being considered may be a very good specialist in the field relevant to the person who recommended him/her to you (for example, in contract law) but may not have the necessary experience in the sphere of law relevant for you. Hence we have the following criterion.

4. Specialization of External Consultant

It is very important that the consultant or law firm has experience in the sphere in which you have a question or need for assistance. Also, if a law firm is recommended to you for a particular field of activity, make sure that the lawyers who will work with you on behalf of this law firm are – if not the same ones that worked with the source of the referral – at least of the same professional level.



The cost of services, in my opinion, is not fundamental when choosing an external consultant. The only point that should be taken into account when discussing the payment for a consultant's work is the ability to pay in stages, based on the amount of work performed.

In order to be able to influence the progress of the external consultant's work, at least two conditions must be met.

a. Consolidation of All Conditions of Cooperation in the Contract

Once you have made your choice of an external consultant, it is important to discuss, approve, and consolidate all the conditions and nuances of the cooperation.

The instrument of consolidation of all agreements, in this case, is a contract signed with an external consultant.

A detailed discussion of the conditions that are of fundamental importance for the company, a detailed description of the desired result, terms, and essential conditions of cooperation in the contract will provide an opportunity to control the process of implementing the task by the external consultant.

Every lawyer knows that in order to appeal any of the terms of a preliminary agreement, it is necessary to set out these agreements in detail in the final contract. The same rule can be applied to external consultants. It is necessary to discuss everything and include it in detail in the contract, as well as to provide responsibility for violation of the terms and conditions of the signed agreement in the future. It is necessary to do this even if the consultant comes strongly recommended or if the task for which the consultant is retained seems to be elementary.

b. Interaction of the External Consultant with a Company Representative

Often, if the company has a lawyer in-house, this lawyer interacts with the external consultant at all stages of cooperation. In the absence of an in-house lawyer, such a contact person may be for example, the project manager responsible for the tasks for which the external consultant had been retained. This interaction is extremely important, since only the internal representative of the company knows the company's needs and can, in the process of implementing the project, identify any problems in the services rendered by the consultant.

Some of the aspects that need to be paid attention to in the process of cooperation with an external consultant, as well as in the evaluation of the external consultant's performance, are:

- the external consultant's promptness (or lack thereof) in to the company's requests or in achieving the objectives;
- the external consultant's attention to (or inattention to) details and nuances when rendering services;
- the external consultant's observance (or failure to observe) the confidentiality of client information;
- any potential existence of conflicts of interest that may exist (for example, between the external consultant and other clients);
- the external consultant's regular communication (or failure to communicate regularly) about the progress of the task or project;
- the appropriateness (or unjustified nature) of bills submitted by the external consultant for services rendered.

Of course, one of the key criteria for evaluating an external consultant is his/her achieving the result stipulated by the parties in the contract, compliance with the deadlines for the provision of services, and the absence of costs for the company not stipulated in the contract.

The right choice of an external consultant, the detailed consolidation of all the essential conditions for the company in the contract, correct task-setting for the external consultant, and regular interaction of the company representative with the external consultant at all stages will ensure fruitful and comfortable cooperation for both parties.

In our company's activities, as well as in my personal practical legal experience, there are a number of examples of fruitful cooperation with external lawyers and law firms. And the observance of all the conditions that I described above has allowed us to cooperate successfully and long-term with external consultants, in particular on cross-border matters and in the support and structuring of investment rounds.

Marina Makarova
Head of Legal at e-Tachki

HOW SMALL LEGAL DEPARTMENTS CAN WORK WITH EXTERNAL COUNSEL



Throughout my career I have worked at small legal departments (and by that I mean departments with fewer than five people – small at least by Greek standards). They have their own characteristics and challenges. In my experience, they tend to rely heavily on the advice of external counsel, who often becomes a true partner of the in-house attorneys. This reliance becomes more pronounced when in-house counsel has to manage tasks across different jurisdictions. In those cases, engaging external counsel becomes indispensable.

Having managed more than 40 outside counsel across the world, here are my insights on how to select and manage them, and how to evaluate their performance:

Selecting Outside Counsel

“The beginning is half of everything,” Pythagoras said. This saying also holds for the selection of the right outside counsel: When done correctly, it is likely that the relationship between the company and the law firm will be a good and fruitful one.

There are several approaches for hiring external counsel and one size certainly does not fit all. The approach that has worked best in my experience is referrals. Working with referrals seems not to be in line with the latest tendencies on metrics and cost-benefits analyses. It can, however, be very efficient when you ask a trusted outside counsel who knows the business and the style of your company for a referral in another country or even in another practice area. The referee typically knows the law firm profile sought by the company and advises accordingly. Further, this method is especially convenient when time is of the essence and you need to appoint appropriate external counsel on very short notice.

Through referrals, it is easier to identify boutique firms that perhaps do not get much exposure online, but tend to give practical, value-for-money advice and are very conscious of a client’s budgetary constraints.

Having said that, when dealing with a jurisdiction for the first



time, legal directories such as Legal 500 and Chambers and Partners can also be very helpful.

While a small legal department may not have the resources and tools to set up a formal Request for Proposals process, beauty contests can be very effective, particularly in terms of the budget, when it comes to a large task like a major corporate transaction or important litigation. A topical example is the preparation for the General Data Protection Directive, where we will be using this RFP approach.

Managing Outside Counsel

Again, small legal departments do not as a rule have access to technological case management and tracking tools. Instead, where such oversight is necessary, in-house counsel can apply some classic principles.

For a relationship to grow and be mutually beneficial, it is very important to make expectations from external counsel clear from the outset. First, the general frame of the relationship should be set. As the external counsel will send an engagement letter with general terms and conditions, it is useful for the in-house counsel to share their own guidelines and processes for outside counsel and emphasize any matter that is especially important to them, whether related to billing, conflicts of interest, or anything else

“Frequent updates are essential and feedback from the legal department on specific items will always be needed, but micro-management from the in-house counsel’s side is always a sign that outside counsel’s performance is not ideal.”

Once this process is complete, the parties can move forward with specific tasks. In my experience, the clearer and more precise the particular brief to outside counsel is, the better they will understand what is needed of them and the happier the in-house counsel will be with the results. This requires, of course, hands-on management by in-house counsel, including a careful review of any memos, availability to clarify any questions, and provision of feedback. I have found that the more a legal department works with external counsel, the less input and guidance the latter will need when handling a task. This is one of the great advantages of forging a strong relationship with outside counsel.

Of course, external counsel should not be put under such pressure that he/she is unable to act. Frequent updates are essential and feedback from the legal department on specific items will always be needed, but micro-management from the in-house counsel’s side is always a sign that outside counsel’s performance is not ideal.

Evaluating the Performance of Outside Counsel

As noted above, a small legal department will likely lack the tools for streamlining the assessment of law firms so will need to employ more intuitive and organic processes. Either way, evaluating the performance of outside counsel will come down to two key factors: results and billing. Each company is different and each in-house attorney values different aspects of a firm’s performance. Nevertheless, all legal departments appreciate practical, hands-on advice that is delivered promptly. When such advice is accompanied by reasonable fees that are within the initial estimate or budget, then that’s an ideal situation.

Two other factors that can make or break a long-term relationship are responsiveness/communication and personal chemistry. This latter consideration, which is far removed from analytics and metrics and corresponds to the human part of a professional relationship, comes into play only when the three first criteria are fulfilled.

Essentially, all of the above translate to trust, which is, in my view, the cornerstone of the partnership between in-house and outside counsel.

Eleni Stathaki
Legal Counsel at Upstream

WHAT MISTAKES SHOULD LAW FIRMS AVOID IN ORDER NOT TO LOSE CLIENTS?



Selecting a law firm seems easy: For large transactions, you choose large international law firms. For less important cases, you may opt for smaller, specialized firms. However, assessing their work may be more difficult.

Ghelamco – the company I work for – is a real estate developer which delivers large investment projects, especially office ones. Every development project has a long life-cycle, with multiple milestones. The project starts with purchasing the land. Then we need to obtain permits necessary to start the construction process. Afterwards, agreements with contractors are signed. As the next stage, we sign agreements with tenants and ensure financing for the building. Finally, we prepare the ready and leased building for sale.

As head of the Ghelamco legal department, I am responsible for every part of that project life-cycle. The signed agreements vary in terms of complexity and value. Sometimes they involve small amounts, but other times we sign contracts worth hundreds of millions of euros. The agreements are signed both with local partners and international companies such as banks, investment funds, and global corporations.

Depending on the case, we hire various kinds of law firms – both small and large. And in some investments, we cooperate with many firms. For example, with our flagship project Warsaw Spire (109 thousand square meters of office space;

three buildings plus a large public space), the project has been going on for more than 10 years now. For this project, we have used nearly 15 law firms, including large, international firms as well as smaller expert firms (engaged mainly to issue opinions). The work on this project is still continuing as the final lease agreements are being concluded and the project is being prepared for sale.

Ultimately, the choice of firm depends on the quantity and complexity of the matter. We use a simple rule here: The more complex, time- and work-consuming the issue, and the more often a quick response will be required, the bigger the law firm must be.



Of course, the choice of a law firm also depends on costs. If the case involves a large-sum transaction, we can afford to hire a large international firm.

“The more complex, time- and work-consuming the issue, and the more often a quick response will be required, the bigger the law firm must be.”

The essential thing is to assess the quality of the services provided. And this may be a challenge. Therefore, law firms should pay attention to several extremely important aspects of cooperation. Failure to take them into account may result in losing a client.

First of all, law firms should know in detail the character of their client’s business. To ensure familiarity with our business, for example, for the most complicated cases we often use the services of the same, proven firms, because from the first day of the cooperation we want to be sure that the firm knows both our industry and our company.

Second, law firms should care about their employees. This directly follows from the first item. The firm’s staff is very important. Legal support involves human work and a lot

depends on relationships between people. Losing a team may have a direct impact on whether the firm is chosen or not. In the case of Warsaw Spire, for instance, one of the law firms working for us experienced considerable personnel change. As a result, we ended the cooperation.



Law firms should know in detail the character of their client’s business



Law firms should care about their employees



Sometimes the back office and resources matter as well



Quality and attention to detail matter

Here again, I would like to emphasize how important it is for a firm to know the character of the project and the company the firm works for. Therefore, for a law firm, it is essential to retain the best talent. At the end of the day, it is the human being and their knowledge and skills which really matter. I often say “I stand with the lawyer,” regardless of what firm he or she works for.

Third, sometimes the back office and resources matter as well. This concerns mainly large and complicated transactions, such as selling an entire building. In such a case, a good reputation is what matters, but also the firm’s headcount, since the choice depends on the firm’s organizational capabilities. For large transactions, we have no choice but to hire a law firm with a big team and proven standards and procedures.

Finally, and most importantly, quality and attention to detail matter. The longer I work – and I worked more than ten years as a lawyer in an international law firm before working for the last nine as head of an in-house legal department – the more mistakes I see made by law firms. From the perspective of the head of legal department, these mistakes are very irritating. And I don’t mean the big, serious, obvious ones. The most irritating ones are minor errors in documents: misspellings, language mistakes, minor shortcomings. From the client’s perspective, this is unacceptable. In return for paying large legal fees, clients expect top quality. If, as head of a legal department, I am able to identify errors in documents prepared by a third-party law firm, it does not look good.

Joanna Krawczyk-Nasiłowska
General Counsel at Ghelamco CEE

THE IMPORTANCE OF A STRONG IN-HOUSE LEGAL UNIT



After working for over ten years in a large international law firm in the United States and another six years in an in-house capacity in Austria I have come to the conclusion that the team you create is the key to your success as a leader. No matter how smart, talented, driven or passionate you may be as a general counsel, the success of your legal department depends in a large part to a strong and motivated team that works well together in accomplishing the tasks and goals that come along.

While cost-cutting is paramount in many organizations, no large company will be able to thrive without having a strong legal department. Investing in and maintaining the in-house legal team will reduce legal risks, contribute to the business's general success, and ultimately reduce external legal costs. Thus, we must consider how one builds this strong legal team.

My experience has led me to believe that building an ef-

fective legal department rests on four pillars: (a) Being judicious in selecting a one's employees; (b) Giving team members freedom in how they do their work; (c) Being appreciative of everyone's contributions; and (4) Being a good role model.

Be careful in who you pick to join the team. I have learned that choosing individuals who possess a similar work ethic is of great importance, and I have found it very helpful to have existing members of my team – in particular my deputy – participate in the hiring process. Getting their views on how they think a new member may fit into the existing team is indispensable.

The second pillar of a strong legal team is freedom/trust. When I worked in an international law firm as an outside counsel to large corporations I appreciated the freedom I was given by my bosses to do my tasks. None of the partners of my law firm micromanaged me. Their primary concern



Building an effective legal department rests on four pillars:



was the result I delivered. After going in-house I discovered that micromanagement was often the norm. Subsequently, after taking on the role as general counsel, I made trust and freedom the guiding values of the legal team. Consequently, with the increasing demand for in-house lawyers to be available and reachable at all times, I believe that more flexible work arrangements should be available. While this may not be true for every business department, legal departments are functioning more and more as in-house “law firms” serving and supporting all business units in a company. Its employees should have the freedom to arrange their work day and/or environment more freely, especially as workers that are trusted and given more freedom are more productive and happier.

The third pillar is building a team where everyone’s contribution is appreciated. There are many administrative tasks (record keeping, archiving, maintaining and updating databases, *etc.*) that need to be dealt with on a daily basis. This work is as important to the success of the legal department as doing legal research or writing legal memoranda. Also, this is the type of work that cannot be really outsourced. I have learned that it is imperative for me to respect the members of the legal team that perform paralegal tasks and to encourage the attorneys to value these tasks as an essential part.

The final pillar of a strong legal team is the GC herself. She should not demand more from her employees than she demands from herself. Do not expect your employees to be high performing if you do not live up to these expectations yourself. The competence of the GC serves as a standard for the legal team. Thus, if the GC is smart, hard working, and ethical, the legal team will have a standard to uphold.

Currently my big challenge is maintaining a strong legal team in light of the fact that the company we are working for will be liquidated in the near future. HETA Asset Resolution is a wind-down company owned by the Republic of Austria. Its statutory task is to dispose of the non-performing portion of Hypo Alpe Adria Bank, nationalized in 2009, as effectively as possible while preserving value. The more successful the employees of HETA are, the more quickly they are going to lose their jobs. Nevertheless, as the wind-down progresses the more legally complex the situation becomes (*i.e.*, assets remaining to be sold are often subject to complex disputes, subsidiaries cannot be liquidated because they are still involved in numerous litigations, *etc.*).

In light of our situation I have found it crucial to maintain a motivated and effective in-house legal team committed to actively trying to resolve these issues. The four pillars which I have described above have helped me develop and nurture such a team to facilitate my company’s goals during its wind-down process.

Mirna Zwitter-Tehovnik, Head of Group Legal at HETA Asset Resolution AG

DEVELOPING AN IN-HOUSE LEGAL TEAM: FOUR TWOS

The First Two: The Setup

It's not the equivalent of announcing the discovery of a distant land to say there are two basic approaches in setting up an in-house legal function. The first is a more generalist approach, which works perfectly in companies which do not require very deep professional expertise in a particular area of practice on regular basis. Instead they require broad legal expertise across various areas.

The second approach is to structure the legal function by practice. This is more common in bigger companies that can afford specialized professionals responsible for particular areas or practices.

If the company is not a law firm and is small, then it does not have many lawyers. A legal function is a cost rather than a revenue-generating function. Still, while the cost-saving role (which lawyers are usually proud of) is great, it definitely should not be the core of a business. Then the role of legal function involves addressing any legal issues that appear within the company's activity: tax, regulation, litigation, labor, contractual, *etc.* Of course, the company may seek external professional advice when material risks arise and/or where internal experience or resources are insufficient.

Because bigger companies naturally have bigger risks

(at least in terms of the amount of money at risk) they generally demand more professional solutions from their legal teams. As the majority of risks recur, many times hiring an in-house professional is more cost effective for a company than hiring a law firm.

Of course there can be a combination of generalist and specializing approaches in a company.

The Second Two: Hiring

As a Legal Director you always have to find a balance between conserving costs and obtaining the best possible professionals for your team. When you hire a ready-to work professional, you might think that the job is done and you can sleep well. Ideal candidates do not exist, however, and an adaptation or a shift of focus for a new employee can be required. In such cases re-training might be painful, and a candidate used to working in another environment may fail. By contrast, there are no such risks if you hire less experienced candidates, who may be more willing to learn and committed to following the career path. I personally feel satisfaction when I hire a less experienced lawyer who exceeds expectations and becomes professional in a short time. And I am sure that primary role of a head of legal is not to be the best in profession but to be able to set up a team of the best.



The Third Two: Training

On this subject there are no twos, and only a choice: To train or not to train. You may train your people, spend time, money, and energy, only to see the now well-trained person thank you and leave. Alternatively, you may not train your people and then face the risk that your team falls behind in this rapidly changing environment. There is no universal solution. If the company uses strong motivation tools and employees are happy to work not for money only, then training can bring a great value. Otherwise it can be waste of resources.

The Fourth Two. Managing

I strongly believe that each person, at one point, makes his or her choice: To stay in his/her initial practice area and become a narrowly-specialized “know-everything” professional or to shift to management. A combination of the two is not possible. It is an angle of sight. Either you see deep or you see broad. If you are a specialized professional, be the best in your chosen area and constantly develop yourself to stay the best. If you are instead a manager, then delegate and motivate.

A manager is not allowed to do everything by himself – even things he can do better and faster than those he

✓ The Setup

✓ Generalists Approach

✓ Structure the Legal Function by Practice

✓ Hiring

✓ Hire a Ready-To Work Professional

✓ Hire Less Experienced Candidates Who May Be More Willing to Learn

✓ Training

✓ To Train

✓ Not to Train

✓ Managing

✓ Delegate

✓ Motivate

delegates it to. What can be delegated must be delegated. In this case the manager gains the ability to focus on more important tasks that cannot be delegated at the moment. Delegation also helps develop the professional abilities of subordinates and – maybe most importantly – it makes the system more sustainable by decreasing the dependence of the company from one person: you.

The second primary aim of the manager is motivation. Although difficult to measure, everybody knows the difference in attitude and performance between highly motivated and unmotivated employees. If the company has a strong motivation policy, then you just need to follow it. But if not, then you need to motivate yourself and afterwards somehow motivate your team. Obviously, in this case you do not use material motivation tools like bonus, salary increases, or valuable gifts. Instead you need to use non-material motivational instruments: competition, public awards, and so on.

Maxim Nikitin
General Counsel at Virgin Connect Group Russia

THE JOURNEY OF BECOMING AN IN-HOUSE LEGAL TEAM



Growing has never been easy. Think about your childhood, when during the night, you would feel pain in your legs without really understanding they were growing pains. The same thing happens when you start the journey of developing an in-house legal team. The key question is: How can we experience the growth together and start running towards to same goals as one unified team?

Knocking on the Door

The journey starts with hiring – a process where companies follow similar stages: Meeting with human resources colleagues, completing aptitude tests, presenting a business case, conducting reference checks, and having a grandfather interview. What is not very common but adds significant value is inviting current team members (who will be working with the candidate eventually hired) to the interview. If there is no other team member, colleagues from other functions may be invited to join the interview to test whether the candidate would fit into the organization. Either way, once peers or other colleagues become part of the interview, you have the opportunity to obtain more enriched feedback about the candidate from different angles, and the candidate has a chance to learn more about the team/work environment he or she is joining.

For the assessment part, if the candidate has only worked in a law firm and does not have any corporate experience,

it would be useful to highlight the difference: To explain that nobody in the company outside the legal department has a legal background so the candidate – if hired – will need to translate complex technical legal jargon into simple, easy-to-understand language. There may be times that communicating in this manner may sound too basic, less grounded, and remote from the sophisticated legal opinions you would draft in a law firm, but delivering legal messages in a simple and short way may be the only way to ensure they resonate for non-legal colleagues.

“In addition to traditional ways of understanding things like products, value chain, customers, stakeholders, and strategy, the best way I used was to expand my network of colleagues across different functions. Joining their meetings, asking about their current challenges, and – when approached for advice – using their language, all can create great collaboration.”



Further, as a lawyer in an in-house legal team, the candidate – if hired – will be part of all challenges and opportunities that the company is facing, leaving him/her without the ability to forget them the way they can be in a law firm after a legal opinion is sent to a client. Lawyers working in-house will need to come back to them the following day. It is therefore a must to strive to find solutions, innovate, and develop an adequate risk appetite.

Becoming One Team

Congratulations, you hired a new member of the in-house legal team! Time to on-board that person quickly ... but what does that mean, exactly? The on-boarding process should include an understanding of business (which may be sometimes left aside) as it fits among legal systems, compliance procedures, and counseling. An in-house lawyer is needed to provide services that cannot be provided by a law

firm – and that can only happen by understanding business. But how then to increase this business understanding?

In addition to traditional ways of understanding things like products, value chain, customers, stakeholders, and strategy, the best way I used was to expand my network of colleagues across different functions. Joining their meetings, asking about their current challenges, and – when approached for advice – using their language, all can create great collaboration.

In parallel, how can we ensure that the new member is fully integrated into the in-house legal team? What I would value the most, as a new member of a team, would be the sense of belonging. Creating this requires that members know each other well (beware of allergies), have a shared identity (find a name for your team), clear strategy, and mission (where we are heading to) ... and a little bit of tolerance (not always easy).

“Maybe the new members of the team will need to wait until the Head of Legal quits to be promoted to the role. But this is not the only option, and team members should be encouraged to think more broadly.”

What’s Next?

Now that the in-house legal team has been created and unified and a business understanding has been developed, what comes next? Often criticized for being impatient or hungrier for changes and promotions than previous generations, the younger workforce does not want to wait for five years to get additional responsibilities (and a nicer title). Still, I believe those with legal background are very lucky to explore new opportunities.

Maybe the new members of the team will need to wait until the Head of Legal quits to be promoted to the role. But this is not the only option, and team members should be encouraged to think more broadly: Can they use their analytical thinking in creating commercial excellence and their experience in employment law issues in human resources for designing better performance management? Can they take the lead in quality and regulatory areas based on a deep understanding of sectorial requirements? Career development does not always need to be vertical; all different linear experiences can add more perspective. At the end, everyone is responsible for his or her own journey – let’s make it more colorful along the way!

Meltem Ozker Gunduz
Legal Affairs & Compliance Director at Novo Nordisk

HIRING THE RIGHT PEOPLE



In addition to hiring employees with appropriate education/work experience, finding employees with profiles indicating that they will be a good match for your legal team is a crucial factor in successful HR management and employee career development.

Unlike big law firms, most in-house legal departments do not contain dozens of lawyers and legal assistants. For this reason alone, it is critical to choose the right people. The legal department tends to be an intersection of sorts for the traffic of all the other departments – and for successful risk mitigation and effective achievement of the company’s objectives, it should be. That is why the importance of staffing them not only with people of the desired level of education and work experience, but with colleagues whose profiles and personalities suggest that they will fit in well and make a valuable contribution, cannot be overstated. For it is true that a single person can affect the stability of a department and even the entire company, both positively and negatively.

Hiring new legal team members must therefore be a very careful and thought-through process, and the best way to

make the right choices is having current legal team members assist the HR department in the selection. The whole story of a new colleague and the future of the legal team starts with recruitment.

In Ahold, our legal team works very closely with our HR colleagues and we have established a successful mechanism of selection, as it is difficult even to imagine how we could hire a candidate with the right profile without bring personally involved in the process. What plays a role in the process – besides the breakdown of expectations and work experience, areas where our HR colleagues are certainly stronger than we are – are the “technical” skills required of the ideal candidate for a position in our legal team. These skills include communication skills and abilities, ways of thinking, problem solving abilities, and the candidate’s overall mind set. In my opinion, without underplaying the role of legal and psychological tests, a personal touch is irreplaceable. There must be direct personal contact from the very beginning. Either you find somebody with whom you are on the same wavelength and you quickly see and feel that your cooperation is likely to be smooth and successful, or you don’t. It’s the proverbial sixth sense that we’d better turn on and use if we hope to find an ideal candidate.

In Ahold’s Legal Department, we do not focus our search on top specialists in a given area; rather, we look for strong personalities who are resourceful and flexible in handling their tasks, capable of effectively applying and reorienting their legal education and experience to the needs and workings of the company. They should be helpful to others and able to deal with legal solution requests in an efficient and practical manner.



“We do not focus our search on top specialists in a given area; rather, we look for strong personalities who are resourceful and flexible in handling their tasks, capable of effectively applying and reorienting their legal education and experience to the needs and workings of the company.”

Most members of our team come from the legal profession and are members of the Bar. The Bar Exam and prior experience as an attorney certainly work in candidates’ favor. However, previous practice as an attorney brings with it certain impediments at the same time. For one thing, the attorney-client approach is different than the approach required of an in-house lawyer vis-a-vis an “internal” company client. That difference is large, and includes many elements, such as the manner of handling the agenda, communication, attitude, task efficiency evaluation, and the division of powers and responsibilities between the legal department and other departments in the company. Most of our colleagues struggled with this change of environment at the beginning of their time with us – a completely natural reaction.

In addition, typically, an attorney in a law firm communicates with colleagues and partners and the assignments that he or she gets are clearly defined, with full documentation. The form in which the attorney processes her/his tasks conforms to the form preferred by the law firm he/she works for. The various assignments that the attorney handles are of appropriate levels of complexity and signif-

icance.

This is rather different from in-house lawyers. Communication within a company is much more challenging than it is within a law firm, and although the Ahold Legal Team is directly subordinated to the Board, the team members still need to be in close and frequent contact with other employees and departments, including shops, as part of their day-to-day agenda. Frequently, they must handle urgent tasks where they are expected to set priorities, and sometimes even to clarify and determine what exactly is needed from them and how to process the task, striving always for effective and practical solutions. Also, they often encounter situations involving issues of overlapping or unclear authority. These aspects of the in-house environment usually take an attorney coming from a law firm by surprise and he or she must learn how to deal with them successfully.

The question of motivation is considered frequently and extensively – but it is almost always described as having three basic component parts: (1) enthusiasm for and satisfaction with the work; (2) teamwork satisfaction and appreciation of the employer; and, last but not least, (3) appropriate rewards and benefits.

The story of job satisfaction is never-ending as long as we work – but it always begins at the recruitment stage. To give a candidate a clear and honest account of the kind of work he or she will be doing and the company’s expectations of them is a key element of the interview – which is why it’s so important for us to be personally present there.

Teamwork satisfaction, along with transparent and clear communication, is in the hands of the head of the department and his or her managerial know-how. The rules for communication he or she lays down have much to do with the team’s response and how the department is perceived by other departments in the company.

The rewards and benefits reflect the economic power of the company, the relevant market standard and, naturally, the department’s results. This third component of motivation is very important, but – as perceived personally and confirmed by previous work experience – the first two parts, in combination, provides the foundation.

Just as the head of the legal department should be there at the beginning – and be personally present at the candidate interviews – he or she should stick to two basic principles of effective, appropriate, and successful management of the legal department: to always know what is going on in the department and what tasks are being handled, and to trust the team. The “one for all and all for one” principle should absolutely apply here. The results of individual team members are the results of the legal department as a whole. No sophisticated management technical rules and reporting can replace personal, regular contact with team members and the building of a platform of trust.

Vladimira Jicinska, Head of Legal for Czech Republic and Slovakia at Ahold

DO EVERYTHING WITH NOTHING

For those who are part of a legal department of 20 in-house lawyers or more, are regularly invited by their Managing Director/CEO for breakfast (to speak about the weather and soccer results), and for whom workload and cost pressure are foreign concepts, there is no need to read further. For all others, welcome to the In-house Club: A club of increased pressure and an increased workload with an increased scope of duties and scarce resources and budget. Welcome to the world of, as Richard Buckminster Fuller put it, “To do more and more with less and less until eventually you can do everything with nothing.”

I’ll put the good news upfront: There is no need to retrain to become a pastor or firefighter (especially because as an in-house lawyer we are already both), or to fall into a serious depression. It is simply time for a new approach. Yes, it is an investment, but it will pay off in the long run.

Changes Need Time

Changing your current way of working will take time – exactly what you feel you don’t have. It is like changing the tires of your car while driving on the highway. We are all somehow stuck in our “old” cycle of business (busyness), buried under urgent tasks and To-Do-Lists as long as the Great Wall of China. Hence, it is time to allow yourself room for change! My suggestions are that you: Block your calendar accordingly (in my view you will need four hours

per week at least, and the best days to find this time are either Monday mornings or Friday mornings); Stop doing things which are a waste of time and only consume energy (for example, eliminate as many meetings and calls as possible and do not allow someone to steal your time by being late or unprepared); Keep your messages (including PowerPoint presentations) as short as possible; Try for a while to focus on only one or two communication channels instead of using all (eMail, Skype/ Lync, mobile phones, conventional phones, SMS, WhatsApp, *etc.*) simultaneously.

Collaboration Counts

First, you are not alone on this journey (and you should not be). Find a Partner or a Coach – perhaps external to the company, though normally such people can be found within an organization/company as well. Potential partners/coaches may come from your company’s LEAN Champion (LEAN is a systematic management method, originating with the Toyota Production System, for eliminating of waste by concentrating on what adds value), if it has one, or someone in charge of Strategy, a Head of Finance, or even your CEO (this will also guarantee support for your activities companywide). Visit a conference (like the CEE Legal Matters General Counsel Summit) to get in touch with colleagues and learn from their experiences.

You can also be your own coach, by introducing the concept



to an objective observer. Split your personality in two, one representing your old self and the other one representing the objective observer. This sounds funny and needs some practice, but it really works.

Further, communication is key! To increase understanding (as well as recognition) of your activities and preparation for the upcoming changes start to communicate your plans as early as possible, and make a point of involving your key-stakeholders.

Make It SIF

“Simple can be harder than complex. You have to work hard to get your thinking clean to make it simple. But it’s worth it in the end” (Steve Jobs).

Now, after you have created room for change (to clean your thinking) and set up your network of supporters, the tough work can start. Make it Simple, Make it Innovative, Make it Flexible (SIF) are nice buzzwords, but where should you start? In my experience, it all starts with an objective assessment of the status quo: The scope of duties, way of working (including tools, templates, processes, outside counsel set-up, budget, *etc.*), internal stakeholders, and needs and

Make It SIF

Make it Simple

- Do you have all contract templates and are they simple?
- Do contracts use the same structure?
- Are processes short and necessary?
- Do you have the right [number of] outside counsel engaged?

Make it Innovative

- How do you communicate with your audience?
- Do you have self-service tools in place?

Make it Flexible

- Have you made templates for FAQs?
- Do you have a clause library?
- Do you train your colleagues regularly?

expectations, all grouped under main categories like Compliance, Contracting, Corporate, Counseling, Collaboration, and Costs. Having all these topics grouped and broken down you can start to ask: Is it Simple (e.g., do you have all contract templates and are they simple, do contracts use the same structure, are processes short and necessary, and do you have the right [number of] outside counsel engaged)? Is it Innovative (e.g., how do you communicate with your audience, and do you have self-service tools in place)? Is it Flexible (e.g., have you made templates for FAQs, do you have a clause library, do you train your colleagues regularly)? The outcome of this SIF-review should be reflected in an Assessment and Improvement Plan that you are able to implement.

This is for sure only the beginning! There is much more to be discovered by “Doing Everything with Nothing.”

Josef Holzschuster
 Head of Legal at Philips CEE

COST CUTTING STRATEGIES

Reflecting upon my career, I cannot remember a single employer who did not propose “let’s increase income and cut down expenses.” Yeah! And that always reminds me of the joke when the Bear complained to the Fox, a Consultant, about the problems caused by his size: He was difficult to feed, in need of a big house, and in constant danger as everyone wanted his fur. The Fox told him: “You should become a mouse. They eat little, can live in any hole, and have very few enemies.” The Bear was happy, but puzzled: “How do I become a Mouse?” And the Fox replied: “I am a Consultant. I can tell you what you need to do, not how to get there.”

My focus in this article is on cost-cutting strategies for General Counsel. I am not interested, here, in costs such as utilities, instruments of labor, *etc.* Instead, I want to focus on cost-cutting related to the activities of the in-house legal department as they involve questions of the balance between in-house and out-of-house solutions, whether to concentrate on one or several law firms, and whether or not to use big brands as oppose to lesser-known or less busy lawyers.

The Purely In-House Solution

After finishing attorney apprenticeships and passing a bar exam, I was given the opportunity to become Head of Legal for two Bosnia and Herzegovina-based affiliates of the Slovenia’s Merkur company. In reality, I was a one-man



show for everything related to the legal function, from negotiations of deals and drafting and terminating contracts, through suing and representing the company at court, to all other common in-house legal department activities: ensuring compliance with statutory changes, providing legal advice, and managing HR administration.

Needless to say, it is very difficult to have one person acting as an expert in all fields, when one usually needs the help of a separate expert for each separate field. But this was not the case for me. As Merkur was facing bankruptcy and thus in survival mode, the company had no choice but to replace two full time employees – the HR and legal function – as



well as one external counsel, with one in-house person. Two salaries were cut to one and, more importantly, the external counsel fee, which included a success fee five or six times higher than my salary, was cut.

I am glad to note that service did not suffer, because our 300 litigation cases were on the active side, in our collection cases debtors were merely buying time, and we had only a dozen of complex cases with no significant value. So, I compensated for my lack of knowledge and experience with a focused determination that I would not fail. Eventually, this focus became business as usual.

This was an extreme example, of course, and a “one-man show” has many challenges, including an overexposure to all sorts of risks – the biggest two being the potential departure of this one person, which would leave the company without any continuity in a very important function, and the inability of one person to address all the company’s needs, leading to an unacceptable bottleneck.

Do Not be Afraid to Give a Chance to a Junior Lawyer and Become a Mentor

After Merkur, I became the Head of Legal at Hypo Alpe-Adria-Bank d.d. Mostar, where I was given a budget and instructed to transform an administrative legal department into a provider of full legal support to all the banking func-

tions.

I inherited a team of four lawyers which, while strong, lacked team coherence, initiative, and proactivity. Six months after, only one of them remained. The team soon increased to five – with a combined salary lower than just one of the four previous lawyers. We achieved this by hiring two juniors who were assigned to two well-experienced lawyers and we relied upon talents in other departments.

“Apart from getting more favorable conditions when focusing on one supplier, you tend to form a sort of symbiosis, meaning that you as a GC do not have to spend as much time explaining your issues and your expectations to the external service provider.”

What happened? The juniors were so keen to prove themselves that their initiative infected the entire team. Their eagerness to learn also helped the senior lawyers to find a sense of higher purpose in being able to mentor someone – so this somehow created a good team spirit while saving money.

Of course, the risk of this strategy is that you may not find adequate candidates, but the only legitimate answer to this is: Do not be afraid of change.

Concentrate on One or Just a Few External Service Providers

In the complex environment that is common in sophisticated and dynamic businesses, it is impossible to rely only on an in-house legal solution. At times, a company can simply not hire additional employees. However, at times it comes down to an issue of purposefulness: you cannot hire experts to work within your team to cover all current and future needs. There are situations when you have to fork out and hire an external service provider.

When hiring an attorney or a consultant, you have to take into consideration the basic principle for every business: You get a bigger discount if you increase turnover.

Apart from getting more favorable conditions when focusing on one supplier, you tend to form a sort of symbiosis, meaning that you as a GC do not have to spend as much time explaining your issues and your expectations to the external service provider as you would with someone you work with less regularly. In addition, by securing external counsel able to obtain knowledge of and understanding for your needs, you get a fully attentive partner able to provide free tips and/or information to keep you from getting into an off-side situation and helps you improve your business.

“You do not pull out a tank to kill a fly.”

Choosing a Brand Name Attorney vs. a Less-Known or Less Busy Attorney

One sentence remains carved in my memory from the 2016 GC Summit in Istanbul: “You do not pull out a tank to kill a fly.”

In essence, the meaning of this sentence is that you have to weigh your situation: How complex is the issue you are hiring external service for, what is the value of the issue (in terms of money, reputation, political-wise, etc.), what legal tools is your opponent utilizing, and how influential an attorney (by reputation) do you need?

From my personal experience, the hourly rate of a brand-name law firm (i.e., one with a regional presence, at least) is up to eight times higher than that of a solid local individual attorney (for instance, in Bosnia & Herzegovina, 240 EUR vs. 30 EUR per hour). In very simple terms, the price of one case handled by a big brand law firm equals eight handled by a solid but less known or less busy attorney or even

a local law firm.

However, there are instances when your case does require a big brand behind it. These are specific projects or cases with higher risk where the company simply needs to be in a position to prove it did its utmost to protect its interests.

In my current position, we are trying, as much as possible, to co-operate with one big brand and one local law firm, to affect a concentration of service and allow us to be able to decide whose service is more useful for a specific case.

“If you pay with peanuts you will end up playing with monkeys.”

Big Brands are Also Becoming More Affordable

Speaking from my own experience and that of my GC colleagues from other financial institutions, big brand law firms are becoming more affordable compared to the last three or four years.

There are two main reasons for this: First, there is fierce competition, as many local attorneys are giving up individual practices and forming law firms which align with other law firms from the region and thus increase their competitiveness with the regular regionally-present law firms. These local firms do not have a shareholder abroad and are thus able to be profitable despite applying much lower fees than their regional counterparts, thus forcing the latter to decrease their prices.

The second reason is that mother companies do not engage in negotiations with local law firms, but rather do this via local affiliates. When a mother company from Western Europe negotiates a service, it often agrees on a fee applicable in its native country, which is usually much higher than the one local affiliates can negotiate.

Hence, good negotiation skills and a periodical revision of conditions are also important.

But, in the end, it is important to know that cost-cutting can only have positive effect to a certain degree, while pushing it too far can seriously damage your business activity by putting too much pressure on employees who start making mistakes or simply leave, or by creating discontent with service provider, and so on.

Thus, for the very end, I would like to reiterate another 2016 Istanbul GC Summit statement: “If you pay with peanuts you will end up playing with monkeys.”

Dino Aganovi, Head of Legal and Compliance at HETA Asset Resolution BIH

A BETTER WAY TO CUT LEGAL COSTS



Legal fees are a necessary business expense in every company. The eternal feud between the legal and the financial departments in regard to the “unnecessary” external legal expenses seems to be the daily bread of every general counsel. The fragile beauty of all legal issues is that they parade as “unimportant and deferrable” at first sight and to the untrained eye; but the reality of all parties and state authorities involved may be completely different.

Based on my experience, a properly working in-house legal team can cut down on legal expenses quite significantly. On the other hand, having an in-house legal department is never a cheap option, but every wise shareholder/manager should see it as an invaluable investment, and one which will prevent further costs.

Only a properly working legal team can determine and evaluate the risks involved in any issue and estimate which measures need to be taken to reasonably mitigate them based on the operational needs of the company. We are not living in a fairy tale world with an unlimited legal budget, where you can outsource everything and let the external lawyers be responsible. Also, most of us General Counsels have experience in private practice, and therefore we know that, from a firm’s perspective, the best client is someone without any legal experience and without an accurate assessment of things which have to be done (and billed).

Our approach at Invia is to consider if we have enough time and in some cases even experience to solve a given matter internally, and if not, how to approach an external law firm. In an ideal constellation, if there is time, we always aim for a mini tender where we inform our partners of the desired outcome /business need and our expectation of expenses. We are quite lucky with contracting legal services since our main market, which is at the moment the Czech Republic,

has a new generation of small law firms or even solo practitioners who are willing to offer fee caps for a complete project. With some projects – mostly small-claims litigation – there is even an option for a contingency fee.

Of course, there are transactions where you do not have time to look for the best price/value ratio or which are simply too big to be handled by someone without proper expertise. I have been lucky to have met some exceptional lawyers from prominent law firms who are willing to take that extra step and, despite the time constraints, provide exceptional services for reasonable prices. Unfortunately, these cases never involved capped fees, but an educated estimate.

We have our inner circle of trusted law firms and solo practitioners and in my opinion the best cost saving strategy is to choose a proper one for a specific matter to be solved. It is always easier and time saving – therefore cost saving – when you don’t have to explain the details of your business and internal standards.

Long story short, I believe there is no magical “cost cutting” strategy, it is a simply choosing a proper lawyer, either in-house or external, for each issue. There is no sense in squeezing your business partner for too much as you can win once, but this is not feasible on a long-term basis. In the end, we need each other and this relationship is very private and based on trust.

Anyway, who can you trust if not your lawyer?

Karel Budka
General Counsel at Invia

THE NIGHTMARE OF IN-HOUSE COUNSEL: COST CUTTING

“Before embarking on a cost-cutting exercise, one should consider what type of internal legal counsel would most effectively serve the needs of the company.”



Regulating an effective budget for a legal department is a major strategic decision that must be considered by companies and their legal counsel. External legal support is one of the most essential elements for a company, but it can also be a major cost. Before embarking on a cost-cutting exercise, one should consider what type of internal legal counsel would most effectively serve the needs of the company. For example, does the company hire a significantly experienced person, able to oversee almost every legal issue that may arise, or should the company consider a more junior law-

yer that can lighten the daily workload and handle critical issues with the participation of external support? After the company elects the appropriate in-house counsel, the department should consider the following:

1. Use In-House Advantages:

When legal service is provided by an internal counsel the advice will be in line with business objectives and corporate strategy, where an external counsel would not be aware of such considerations. Therefore, in-house legal counsel can be a valuable partner in advancing the strategic mission of the company.

2. Determine Legal Needs and Hire External Lawyers Accordingly:

The external law firm you hire does not need to be the “number one” firm in your jurisdiction. Depending on business needs, it could be a well-known international law firm



or, alternately, a very basic local firm with relevant experience in the relevant field. The question comes down, simply, to the particular needs of your company. In other words, only hire a law firm after determining your company's needs.

“Remember, once you select a law firm, you are not married to that firm. If you think the external counsel you are working with is not a good fit for the job, or if that firm provides incorrect information, or delivers its product late, don't hesitate to find an alternative.”

To ensure you select the right law firm, be prepared to meet with several prospective firms. Bring all relevant documents,

emails, and other materials to the initial session to avoid the need for further calls or meetings. Don't hesitate to hire the most expensive lawyer if it is necessary, especially if the work involves contracts, corporate matters, or important cases. The outcome of selecting unqualified counsel can be disastrous. Don't forget that sometimes a very experienced lawyer will be more efficient and cost-effective; furthermore, you won't have to educate him on your specific needs.

3. Distribute Standard Functions to Low Level Team Members or Different Departments in Your Company:

Allowing trainee or junior lawyers to complete standard corporate registrations, trademark renewals, filings, and other similar processes will have a huge impact on your budget. You should not pay outside counsel to complete very basic transactions, as these tasks are time-consuming and costly. If you need to use external counsel for these duties, try to hire a cost-effective option.

4. Be Open to Hiring Different Lawyers:

Remember, once you select a law firm, you are not married to that firm. If you think the external counsel you are working with is not a good fit for the job, or if that firm provides incorrect information, or delivers its product late, don't hesitate to find an alternative. The legal market is continuously evolving; legal fees change frequently, and a lawyer that knows your company won't hesitate to move to another firm.

5. Pay Only for the Work Done and for the Time it Took to Do It:

To control costs, it is important to make sure you give the law firm you're working with clear and specific directions regarding due dates and follow the status of their work closely by requiring regular status reports. You should also try to reach your external counsel during normal business hours and avoid making the lawyers work overtime. Without guidance and instructions, your external counsel cannot be efficient, which will result in higher fees. If possible, make fee arrangements on a case by case basis. For example, in a litigation case payment might be based on a mixture of fixed and success fees, where for a contract review a capped or flat fee may be more appropriate. Review your legal bills closely and do not hesitate to question a statement or expense report if you think it is incorrect. Establishing a budget and ensuring compliance with that budget are key components in controlling costs as an in-house counsel.

Ahmet Ilker Dogan
Vice President and General Counsel at Alacer Gold



HOW TO PREPARE YOURSELF AS THE HEAD OF A LEGAL DEPARTMENT FOR THE RAPIDLY CHANGING WORLD

Changes: Politics and Economy

Our world is changing in front of our eyes. The political situation seems to those of us living in developed countries as experiencing the most rapid changes since the fall of communism. Who could have imagined five years ago that a billionaire and a media star would become the 45th President of the United States of America, the people of the United Kingdom would have opted for Brexit, and a populist leader of the Front National in France would be one of the front-runners for the French Presidency? The world economy is still recovering from the 2007 crisis – it took Dow Jones almost six years to surpass its October 11, 2007 peak when it traded at an intra-day level high of 14,198.10. Economic growth in most European countries is still weak compared to pre-2007 times and lags far behind China, India, Korea, and Singapore. This, in turn, has a significant impact on our social environment. For the last several generations, starting from the post Second World War era, we have become accustomed to the idea that the next generation would have a better and easier life. This dream was shattered by the 2007 crisis and made only worse

by the instability following the swift development of ISIS, the Russian annexation of Crimea and instability in Eastern Ukraine, the immigrant crisis of 2015, and the growth of terrorist organizations eroding the core feeling of safety in Western European societies, which was one of the cornerstones of the European development to which the young democracies of Central and Eastern Europe aspired after 1989.

Ok. You can ask: Why on Earth is this guy dwelling on the obvious things we can see on everyday news bulletins? My intention is to show you the wider context of our work as general counsel, heads of legal, or legal directors in modern European companies. Regardless whether you sit on the management team in the head office or you work as in-house lawyer in a remote location you are affected by the rapidly changing world.

Change: Security

On the subject of the changing nature of security, let me start with a very down-to-earth example: travelling in Eu-



rope in these traumatic ISIS-affected times. A couple of years ago you could easily jump on a plane, train, or car and travel from Warsaw to Paris or Rome not thinking about anything but a driving licence – but today you can be stopped and search at almost any intra-European border.

Another example involves airport or train station safety. If you lived within the Schengen area two or three years ago you could travel without even being asked for a ID or a passport. You could arrive late without risking a long queue at the security/passport/ID control. But now you need to take into account the longer time expected for security clearance, so you need to be at the airport earlier – requiring you to exit your meetings earlier. The same will happen with train stations – following the tragic bombing at the Madrid train station in 2004 special security measures were introduced Spanish train stations, meaning your luggage now is required to go through security scrutiny similar to that at the Barajas Airport. Once again you need more time and patience.

Another issue related with security at public places: Would



you be worried about being at airports, shopping centers, promenades, or stadiums a couple of years ago? Probably not. But after the terrorist blasts at the Brussels Zaventem airport in 2016, Nice's promenade truck rampage in July 2016, and the Christmas 2016 assault on the holiday-shoppers in Berlin, one wonders whether public places are safe anymore. What about our offices, production facilities, or nuclear plants: Are they still safe?

Europe – especially in the Western part of the continent – has been in a “safe” bubble since the end of the IRA/Red Army Faction/ETA bombings. But now you remain under a permanent security threat in any major city of Europe.

Change: Technology

Let's consider another aspect impacting our lives: technological development.

In terms of social media, twenty years ago Facebook, Twitter, and LinkedIn did not exist. Indeed, most of the world did not even have access to the Internet, and instead gained information mainly from TV/radio news and paper newspapers. Dissemination of news and ideas was very slow even in late 90s. Today, a piece of news goes around the world in a blink of an eye. And our private lives were different as well: In the past you would have to be a VIP/celebrity and be followed by paparazzi to have your life under permanent surveillance, while today you can be photographed at any place at any time and your picture can circle the world in a few moments.

So how can we face those challenges and confront them successfully?

First, as a team leader you need to change your frame of mind. You can no longer be "happy and fat," content with your environment and hoping that it will not change in your lifetime. I remember my parents working for the same employer and almost in the same place for almost 40 years. That stability is no longer available to us. If you work for a state-owned company, there may be a young pretender seeking your position; if you work for a foreign investor your job may be gone due to the re-polonisation of certain branches of industries or simply because your position is obsolete and the position is to be transferred east.

I learned a nice abbreviation recently: VUCA. VUCA stands for the "volatility, uncertainty, complexity, and ambiguity" of general conditions and situations. Exactly like our modern world. You need to face the VUCA and come out of that conflict successfully. You need your internal strength in order to face challenges and to support your team.

"You can no longer be 'happy and fat,' content with your environment and hoping that it will not change in your lifetime."

Second, stand up to the world and lead your team in difficult and uncertain times. Explain to them the VUCA world and lead by example – enhance and stimulate personal development, promote rotation, and if needed protect them against internal and external evils. Adjust your treatment of your employees to their different needs. Young and unexperienced employees need more guidance – you need to be more like a father to them – do not let them lose their way and get demotivated by daily failures and a lack of vis-

ible success. For those more experienced, be a guide: Show them the direction and coach them to be successful.

Third, do not forget about the well-being of your team. This includes both a proper work-life balance but also a healthy working environment, including a well-designed space, well-balanced nutritious food in your canteen, and accessible sport/work-out options. You could say that this was the case in the past when the employer took care of many needs of the employees, but in my humble opinion it is necessary now as well two main reasons: Primarily to allow your team to have a healthy springboard from what can be a monotonous workload and second to keep them motivated and loyal to your company. If you keep employees happy and motivated – especially younger employees, who are representatives of Generations Y&Z (and who according to surveys are not so much linked to the jobs but rather to exciting professional challenges) – they will stay with you. If you fail to do so then you will need to look for new trainees and employees.

You could say "but it does not concern me – I'm the GC or Head of Legal – why should I behave like an ordinary manager?" The truth is you are no different, no better or worse, from other managers and leaders in your organization. I would even say that you should do better than any other manager due to the tradition of our profession and its high ethical standards.

Finally, what if you fail and your team starts to disintegrate or your employees develop apathy and a culture of low-performance develops? If you have tried and failed, my recommendation is that you go and seek support in your organization. Do not be afraid to show weakness and accept failure. I am convinced that you will find a helping hand – you can always use the common lawyer's excuse: "I was not trained in HR and soft skills" – and I'm sure you can do better. I will have no sympathy for you if you did not try and fix your team – then you should not be a GC or the head of the legal department – and you do not deserve any compassion and should seriously consider another job.

"Do not be afraid to show weakness and accept failure. I am convinced that you will find a helping hand."

In summing up I would like to use wise words I recently found on Twitter: "Sometimes there are things in life that aren't meant to stay. Sometimes change may not be what we want. Sometimes change is what we need."

Marcin Bruszewski
Head of Legal Affairs at Fortum Power and Heat Polska



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BEING A GENERAL COUNSEL DURING A STATE OF EMERGENCY

After the failed military coup in Turkey on July 15th, 2016, The Council of Ministers of Turkey declared a State of Emergency (SoE) in the country. This article focuses on the position of a GC when suddenly confronted with a SoE, needing to ensure the transformation of the company to ensure compliance with the SoE regime.

After the Declaration: Day 1

By their nature, legal functions always monitor legal developments in relevant areas, and thus are often first to hear of sudden and unexpected developments. The first task is to make sure the General Counsel (GC) is informed immediately after the SoE declaration, and it is extremely valuable for the team to provide the GC with a summary of information about the SoE regime.

The GC should then take the following actions with his/her team immediately;

- **Check:** The GC should check to ensure that the CEO, the Board of Directors, Senior Executives, and Legal Function members are safe and accessible, while seeing that HR departments are doing the same thing for employees.
- **Review:** The SoE regime, including international law considerations, should be reviewed by the in-house team (with the help of external legal advisors, if necessary).
- **SoE Team:** A SoE team should be created and made responsible for dealing with SoE-related issues, questions, informative tasks, trainings, and so on. This team may consist of lawyers, paralegals, and members of the finance, risk,



compliance, AML department teams, along with other officers as necessary.

- **Assessment Meeting:** The GC should schedule a meeting with available Senior Executives to inform them about SoE and assess the SoE's effects on the business – if possible with the contribution of external legal advisors.
- **Informing Employees:** The legal function should prepare a summary regarding the SoE and its significance to the company and distribute it to all employees of the company. The note should include:
 - The reason for and expected duration of the SoE
 - Things/actions to take into account under the SoE regime
 - Announcing the formation of the SoE Team
 - Any elimination or limitation of fundamental, personal, and/or social and economic rights and freedoms that may be effected by the SoE



A Week After the SoE Declaration

After seven days of SoE the company should be somewhat accustomed to the SoE regime, and the following items should be completed:

- **SoE Committee:** Establish a committee to monitor and manage SoE related activities, potentially chaired by the GC, receiving regular updates from the SoE team.
- **Plan of Action:** The GC should ensure that Senior Executives have assessed the situation and should ensure that a resulting plan of action is submitted to the Board of Directors. This plan should, at the very least, consist of:
 - Information about the SoE regime
 - A list of responsible persons in the company related to the SoE, including emergency contacts
 - Information about the roles and responsibilities of the SoE Committee
 - Information about which forms of business as usual need to change, and how – especially of course those involving money
 - Potential emergency scenarios and responses (including, potentially, a stress test)
- **Reviewing Contracts:** Almost all contracts have Force Majeure clauses, and as a SoE is generally accepted as a legitimate triggering event justifying the right to terminate contracts, the legal function should review all contracts with third parties accordingly.

- **Supplier Check:** The GC – with the help of the Procurement Department – should check suppliers' contracts and their positions under Governmental Decisions, Court Decisions, and a SoE regime. (In Turkey, for instance, thousands of entities closed following the SoE Declaration and their assets forfeited to the Government).

- **Cash Out-Flows:** The GC should instruct the Finance Department to be sensitive about payments to third parties or customers, and anti-money laundering programs and prevention of financing of terrorism measures should be followed scrupulously.

- **Customer Communication:** The Marketing Department – with the help of the GC – should inform customers regularly about developments in the SoE and the legal position of their assets.

Final Tips to General Counsel

The GC's role in furnishing legal advice to the Board of Directors, CEO, and other senior executives is even more important under a SoE. Therefore the GC should be assisted by external legal advisers in making and communicating critical decisions. My experience is uncertainty in legislation is not unusual in a SoE, therefore the following steps may help GC in this process:

- Obtain the view of external counsels
- Communication with the regulator is key, and requesting clarification in regulations is always an acceptable approach
- Use associations and lobbying channels to request additional clarification of legislation
- Check other States' experience in States of Emergency

GCs are powerful persons and companies from time to time rely on their opinions or personal interpretation in business because of lack of clarity in legislation or uncertain regulations. However, making an important business or legal decision based on a personal understanding or assumption may not be as advisable in a SoE.

In Conclusion

States of Emergency are, by their nature, temporary in duration but intense in their consequences, and GCs should even more proactive than normal in such periods. GC's support to other departments during SoEs is vital, and GC should ensure that senior executives are aware of the need to consult with them before making any critical business decisions which may have a link with SoE regime. This helps GC to intervene in problematic decisions early, and protect companies against potentially negative consequences.

Kurtulus Caltekin
Head of Legal at Aviva SA Pension and Life Insurance

SAILING THROUGH A ROUGH ECONOMY: AN OPPORTUNITY TO SHAPE THE FUTURE OF LEGAL SERVICES



In a challenging economy, in-house lawyers face higher expectations from their clients. On one hand, legal costs are usually seen by businesses as a strong candidate for potential savings. With that in mind, in-house counsels must navigate budget limitations through different measures, including curbing external spend.

In this article, I aim to outline how, from an in-house counsel's point of view, law firms can provide stronger support to in-house teams. I will also briefly tackle the increasing

and changing demands of internal clients and my thoughts on how in-house counsels can continue to meet, or even exceed, client expectations.

From discussions with external counsels in different countries, I see the majority are already looking into ways to align their business models with the new expectations of in-house counsels, influenced as they are by the demands of their internal clients. In-house counsel candidly sharing their ideas, expectations, and needs could further assist law firms in accomplishing this business model change.

The challenge with external spend is not only saving but also accurate budgeting. Compromising on service quality is not an option. Finance departments now insist more than ever on accurate forecasting of external legal spends. It is fair to say that many companies have been successful at navigating the difficulty of forecasting legal spends pertaining to emergencies, dispute resolution, and special projects. Nevertheless, a large portion of legal spend still goes to



other types of external instructions that, from a Finance department standpoint, can be anticipated.

“In-house counsel candidly sharing their ideas, expectations, and needs could further assist law firms in accomplishing this business model change.”

Law firms can, in my view, be of great assistance to in-house counsel in that respect by finding innovative, flexible, and transparent ways to reach a win-win solution. For example, an in-house counsel who is responsible for multiple jurisdictions may prefer working with a law firm that can offer quality legal advice in more than one jurisdiction for an all-in annually-revisable fee cap covering a mutually-agreed

and clearly-defined scope of legal services.

In addition to receiving legal advice that is professional, practical, and provided with a great sense of urgency, most in-house counsels will appreciate a law firm’s proposition that offers value-added services, which may include one or more of the following:

- A tool to provide up-to-date information on local law and legislative/regulatory developments
- Contributing to orientation of new in-house lawyers
- Designing and hosting a database of legal opinions provided to the client free of charge
- Reasonably-priced contingent legal support during the process of replacing departed in-house counsels
- Low Cost Centers for handling routine and relatively low value matters

On the other hand, the demands of internal clients for in-house lawyers to act as “partners” have been on the rise. Internal clients now tend to look beyond our statements that we understand the business’s strategic goals, plans, needs, and challenges, into our actions and sometimes even the way we address them (as clients or as colleagues/partners).

The key solution to meet those expectations is to, simply, to walk the talk. To listen to our clients and then make our actions a true reflection of what they expect – and not what we believe they expect. To build trust and personal rapport with our clients by showing that we truly understand the challenges they face and genuinely care for the business. To belong to the organization and not work in silos. To participate and share valuable input on general business matters and not only confine our contributions to the legal scope. To make ourselves accessible and available.

Obviously, these suggestions may not be feasible for all. The key takeaway, in my opinion, is the importance of open discussion between in-house and external lawyers as well as between in-house lawyers and their internal clients. A discussion that aims at providing an understanding of the realities of the current environment and finding ways to overcome the challenges it poses. Through that discussion, we can seize this opportunity together to modernize the way we serve our clients and ensure continued appreciation of the pivotal role that lawyers have long played in international business.

Walid Sowaidan
Head of Legal for the CEEMEA Region at 3M

THE FUTURE IS ALMOST HERE: ARE WE READY?

Even though we have not yet reached the speed of light, the future is almost here.

The future comes to different parts of the globe unevenly. But we can already see its shape. What challenges do we, lawyers, have on the horizon? What can already be foreseen? Which legal questions may arise? How can we answer them? Let us consider.

Legal Tech

A number of new technologies are already beginning to change the legal landscape.

Smart Contracts are special types of contracts, in electronic form, that are either fully or partially self-executing. For instance, when a cargo ship reaches the port of destination, a GPS device can inform the smart contract that its shipment has been delivered, and the contract can automatically give a command to wire money to the Seller.

Legal Bots use software to fill in templates of claims, requests, *etc.* It's not rocket science, but it saves time. For instance, there is a bot in the UK to fill in challenges to parking or speeding tickets, complaints about flight delays, *etc.*

Computer-Assisted Document Review can help locate particular clauses in different parts of contracts, obvious contradictions, *etc.*

Decision Prediction Software analyzes the court decisions of a particular judge, and forecasts the likelihood of a particular result.

Ghost legal firms consist of lawyers working from home, communicating and cooperating with one another via computer. Traditional legal firms are already feeling pressure from such firms because, as they have no offices, and thus no leasing and utilities costs, they are able to offer much

lower prices.

E-Justice may soon exist, consisting of autonomous, AI-driven virtual courts able to hear and resolve disputes quickly and cheaply. Imagine a judge who does not eat, does not sleep, is not prejudiced, does not get tired, and cannot be influenced by a third party. The only thing important for him or her is the law. But please forget about your psychological tricks to generate sympathy from the Court. They will not work with an e-judge.

New Blockchain Currencies

Bitcoin, lightcoin, and other electronic means of payment, all based on blockchain technology, are growing in popularity. The question remains, however, whether and to what extent governments will allow such currencies to coexist with their national ones. For now, authorities are very cautious in this matter, and blockchain-based currencies are prohibited in many jurisdictions. One thing we know for sure – allowing such currencies to circulate is indeed a threat to government's currency monopoly.

Robots

In the middle of the last century famous science-fiction writer Isaac Asimov proposed laws for robots, now known as Asimov's Three Laws of Robotics:

- A robot may not harm a human being or, through inaction, allow a human being to come to harm.
- A robot must obey orders given to it by human beings except where such orders would conflict with the First Law.
- A robot must protect its own existence as long as such protection does not conflict with the First or Second Laws.

Legislators in many countries (including the EU and in Russia) have started to draft specific laws for robots. According



to a recent EU draft law smart autonomous robots (i.e., not all robots) can be defined by taking into consideration the following characteristics of an intelligent robot:

- acquires autonomy through sensors and/or by exchanging data with its environment (inter-connectivity) and trades and analyzes data
- is self-learning (an optional criterion)
- has physical support
- adapts its behavior and actions to its environment

Can and should autonomous robots have rights, obligations, and liabilities, just as individuals and legal entities do? Should a robot have a set of basic rights? At the moment, a robot, like a car, is just the property of an owner, who is fully responsible for any damage the robot causes.

Do we need to create a new fiction for smart robots (as we have for legal entities) providing them with legal capacity? But if a robot is to be legally liable for something, should we then start paying it a salary, or providing it with the right to live – i.e., not to be switched off?

In my opinion we should apply Occam's Razor and work with the legal tools we already have: Insurance against damage to 3rd parties caused by robots; special funds, run by owners of robots, for the same purpose; programmers, designers, or producers liability for damage caused by a smart robot; and in some cases, taxes on robot labor. There is no need to provide legal capacity to robots – to complicate things without reason.

Another related issue is the transfer of human brain function into machines (for those whose bodies fail because of age or sickness, among other reasons). Questions that will undoubtedly arise include: Is this the same person or a copy? Does the transfer of personality mean the transfer of legal rights, obligations, and property to the new being – and how should that be apportioned for copies? Will the heritage legal mechanism be applicable here? Will an electronic person have the right to shut him or herself down, since he/she will not be limited by biological age?

Artificial Intelligence

Some scientists are expecting human-level artificial intelligence or even higher (so-called “superintelligence”) to appear in this century. The problems with the coming AI are more philosophical than legal: How to build this superintelligence such that no one group of people obtains an advantage over others, does not turn against humanity, and is instead used for the benefit of all people, everywhere. Several NGOs, including the OpenAI project that is sponsored by Elon Musk, are already working on this issue.

Internet of Things

The Internet of things is another area of fast development. Your refrigerator makes an order through the Internet and the parcel is delivered to your apartment by a drone. In turn, your apartment is a Smart House, saving electricity, using solar panels and geothermal energy, *etc.* Sounds good – but there are potential risks:

- Your provider may be able to obtain control of your property against your will
- Subscription means you pay constantly, not one-off
- Monopoly of the provider on the related markets
- Your property expenses increase
- The provider can collect data from your property for unauthorized use

Cosmos

According to the United Nations' Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space:

- The exploration and use of outer space shall be carried out for the benefit and in the interests of all countries and shall be the province of all mankind

- Outer space shall be free for exploration and use by all States
- Outer space is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means
- States shall not place nuclear weapons or other weapons of mass destruction in orbit or on celestial bodies or station them in outer space in any other manner
- The Moon and other celestial bodies shall be used exclusively for peaceful purposes
- Astronauts shall be regarded as the envoys of mankind
- States shall be responsible for national space activities whether carried out by governmental or non-governmental entities
- States shall be liable for damage caused by their space objects
- States shall avoid harmful contamination of space and celestial bodies.

But what should we do with the mining of asteroids (which are very rich in metals) and/or bringing them to Earth orbit to use for settlements, which may be started by private companies as soon as the 2020s? As space bodies belong to everybody, who can authorize or license such activities? Who will be granted ownership of metals from asteroid depths? How can one lease a space elevator or a space hook?

Human colonies on Moon, Mars, and satellites of Jupiter and Saturn may also come fairly soon, requiring the creation of local law. We should start drafting it now.

And how about a contract with Extraterrestrials? Imagine you've got a request from your client to think it over. The client says, "look, we need a supply contract with these ET-guys from the news ASAP." Do they have the legal capacity to sign contracts? And how about Global Earth Customs and export/import operations through it?

Fusion (Thermo-Nuclear Energy)

ITER (which means "the way" in Latin), which is currently under construction in Southern France, is a magnetic fusion device designed to prove the feasibility of fusion as a large-scale and carbon-free source of energy. It is based on the same principle that powers our Sun and stars. The experimental campaign that will be carried out at ITER is crucial to advancing fusion science and preparing the way for the fusion power plants of tomorrow. ITER will be the first fusion device to produce net energy, maintain fusion for long periods of time, and test the integrated technologies, materials, and physics regimes necessary for the commercial production of fusion-based electricity. No doubt, it will change the global energy balance. But, oil and gas tycoons, you can relax till the mid of 2030s – ITER is not expected

to be up and running earlier.

Medicine and Genetics

New medicines, including ones personally designed based on an individual's particular DNA, are on their way. Questions to be on our table soon include those related to three or more parents of a baby and their legal status, the legal status of genetically and technically modified (augmented) people, and the legal and ethical issues of genetic experiments over humans.

New Balance in the Intellectual Property Area

There is a growing demand for new balance in intellectual property law, including digital rights management. Growth of the Internet and global communications requires a review of legal regulation in IP rights, since the present model, created centuries ago, is outdated in the modern information society, where people spend much more time on creative activities than they did before. The present model is not flexible enough (think how much is required to register a Trade Mark, for instance) and belongs to industrial society, seriously limiting the rights of third parties to modify somebody else's creations for their own use, for instance. New trends in the intellectual property area include crowdfunding, free-will donations to a creator instead of usage fees, fair-use doctrine development, liability of Internet-providers and hosting service providers for violation of IP rights, among others.

Big Data and Personal Data protection

Banks, state agencies, retailers, advertisers, payment systems, NGOs: it seems that everybody collects personal data. They know everything about you: Where you shop, where you work, where you live, what you like, what are you up to.

There is a growing demand from individuals for personal data protection, to maintain a legal right to exclude private info from the public space – the right to be forgotten. The right to be forgotten is a concept put into practice in the European Union in the beginning of the 21st century, arising from the desire of individuals to determine the development of their life in an autonomous way, without being perpetually or periodically stigmatized as a consequence of a specific action performed in the past.

So, make a solicitation to be forgotten right now. Leave your laptop, tablet, cell phone and other gadgets home. Come alone. Write by pen on paper. Big Brother is watching you.

As you see, the questions from science fiction books are already on the table. The sooner we start dealing with them, the better for us. Better to do our homework in time than to react when the issue is already here and burning.

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Warsaw, 1-2 June, 2017

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