

MORE WITH LESS

The annual Asian Legal Business In-house Survey gauges the mood of corporate counsel across Asia. This year the survey finds that even as in-house counsel continue to grow in prominence within their organisations, they are also contending with reduced resources and the effects of a slowing economy. And they are increasingly requiring more from their external counsel.

BY RANAJIT DAM AND RAJ GUNASHEKAR



More than 350 in-house counsel took the ALB 2017 In-house Survey, our annual exercise in gauging the mood of the corporate counsel across Asia, as well as the challenges they are facing. The respondents, working in industries ranging from financial services to life sciences, were located not only in the bigger centres like Singapore and Hong Kong, but also in countries like Lao PDR and Brunei. And the responses they provided shone a light on the changing nature of their work, their evolving relationships with external law firms, and some of the key challenges they are facing.

Do you agree with the following statement: “I have confidence that the person I report to understands my role and the value in-house counsel add to the business.”

Agree	90%
Disagree	10%

SEEING THE VALUE

If there's one thing clear trend that we've seen on the in-house side in the past few years, it is that corporate lawyers are increasingly supported, trusted and feted within the business. This is reflected in the almost unanimous agreement among respondents to the statement that managers understand the role, and the value in-house counsel add to the business. "People are aware of the need for an in-house counsel," says Alice To, the Hong Kong-based general counsel at Hsin Chong Construction Group Limited. "The senior management is supportive of an in-house legal function. At the operational level, colleagues generally welcome the relatively new in-house legal team." Concur Soon Hee Koh, Head Legal Counsel, Asia & Oceania at Yara Asia: "The upper management team members which have climbed through the ranks mostly consider the in-house lawyers as core business partners to be involved at an early stage and in most stages of the processes and projects."

That said, each organisation is different and requires different types of skill from their legal teams, notes Monisha Kamdar, Head of Legal at Raiffeisen Bank International in Singapore. "For my organisation, initially, I had to work hard to get

management to see the value. It was a tough task but eventually and for the past few years, I believe that they fully appreciate the value the legal team brings.”

Pavandeep Gill, senior legal counsel at Gobear, feels that while organisations do appreciate the value that corporate counsel bring to the table, in larger organisations, there seems to be a trend where the legal counsel comes in only at the end of the process, which tends to make things much more difficult. “I feel that a lot of issues must be addressed in the mid-stages,” says Gill. “Trying to solve them in the last stages pose much risk and create bigger obstacles.”

Kamdar notes that to get organizations to see the value, in-house firstly need to actually add value. “By this I mean you can’t just do merely routine, low value-add tasks and expect someone to see

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any value that isn’t there. You have to contribute at a higher, practical and commercial level. To do so, one must know the business objectives and drivers of the business,” she says. “Secondly, face to face communication is important. While writing long memos or analysis is well and good, it is equally important to walk through the advice with the business so they understand it. It is very possible that they do not have the time to read the memo but could do a quick coffee meeting with you.” Thirdly, internal time and quality service standards need to be maintained in the same way a private practice lawyer would service her or his clients. “If it is easier and quicker for the business to pick up the phone and call an external private practice lawyer than their own internal legal adviser, then that is a sign that you are not doing what is required of your role,” says Kamdar.

FROM THE SURVEY

In 2017, do you expect your in-house legal/compliance team will grow?

It will grow 40%
 It will shrink 2%
 It will remain the same 58%

What kind of work keeps your department most busy? (Top 5)

Regulatory or governmental changes 61%
 Ethics and compliance issues ... 53%
 Mergers and acquisitions 40%
 Information privacy 29%
 Protection of intellectual property 24%

Which are the major regulatory issues that could pose a risk to your business? (Top 5)

Industry-specific regulations 75%
 Anti-corruption laws 37%
 Antitrust laws 34%
 Labour laws 29%
 Environmental laws 21%

Which of the following are key performance indicators that you report regularly to your business?

Average response time of legal department	50%
Outside counsel spend	43%
Litigation exposure	42%
Legal spend as a percentage of revenue against industry average	24%
Litigation win rate	18%

MEASUREMENT

But how is the performance of in-house counsel being measured today? When asked to name their key performance indicators, half went for “average response time of legal department;” 43 percent picked “outside counsel spend” and 42 percent named “litigation exposure. Interestingly more than a sixth of all respondents said they had no KPIs.

Kamdar feels that it is not fair to measure a legal department by outside counsel spend. “This is because, it is very hard for the legal department to anticipate the business strategy that may be adopted and what hurdles might crop up and what litigation expenses may be involved if things go wrong,” says. “Response time is obviously an objective measure but I think they should be measured against the value and quality of service they provide. While this is less tangible a measure, it would be certainly be a more accurate measure of the legal teams’ contribution. This is similar to how one would value and measure the services of outside counsel – timely advice, commercial or relevant advice and good quality advice.”

Katherine Lee, the Hong-Kong-based head of the legal department at Animoca Brands, says that KPIs are currently measured by the complaint rate of internal customers in terms of various factors, such as meeting business needs in general, response time and ability to address issues among others. However, response time can again vary according to the kind of work. “Frankly speaking, it all depends on the mix of work that I have received from different departments. Some work requires more time to analyse and some are straightforward.”

IN-HOUSE SURVEY

For Gill, modern-day legal departments should be measured in terms of what they bring into the company because organisations need to have legal counsels who are reliable. "If I have to hire external counsel, then it has to be only in niche areas," he says. To agrees: "I do almost everything myself and there has been a major cut in external legal costs since my arrival in Jan 2015. I do believe that modern-day in-house counsel should get their hands dirty and should not hide behind external counsel."

What are your main concerns when it comes to the external counsel you are using? (Top 5)

Fees are too high or unexplained	64%
They don't understand our company/industry	38%
They are not responsive enough to our concerns	37%
They are slow, inefficient, or give bad advice	23%
Partners are either not involved or don't provide input	23%

A CHANGING RELATIONSHIP

Expectedly fees tops the chart when it comes to the major issues that in-house counsel have with their law firms, being mentioned by nearly two-thirds of respondents. But the other figures also make for sobering reading: More than a third say they don't understand the company or industry, and are not responsive enough to the concerns of their clients. And nearly a quarter say that they are "slow, inefficient of give bad advice.

But back to the fees. A slowing economy means that the companies are watching every last dollar that is spent, and in-house lawyers are similarly tasked with ensuring that money is spent judiciously. As a result, the fees have become a sticking point in the relationship with law firms, as the industry moves towards a fixed-fee model propelled by the demands of in-house counsel. "There is absolutely a need for fixed fees which should be a trend," says To. "This is not only for cutting costs, but for budgeting purposes as

How satisfied are you with the external counsel you are using?

Extremely satisfied ..	12%
Generally satisfied, although there are a few areas for improvement	78%
Not satisfied; there are one or more significant areas of concern	10%

Which one of the below best describes your legal team?

Highly external	5%
Balanced	54%
Highly internal	41%

What are the main services you will require from external counsel in 2017? (Top 5)

Arbitration and dispute resolution ...	55%
M&A/Corporate finance	50%
Regulatory advice ...	46%
Intellectual property, technology, data protection	34%
General commercial contracts	23%

Are there any new jurisdiction(s) in which you will require external counsel in 2017?

China (PRC)	18%
Hong Kong	12%
Indonesia	11%
Singapore	9%
South Korea	9%

well, which is more important for a commercial organisation."

An important reason behind this is the competition in the legal market, according to Gill. "A lot of law firms are facing competition from their peers and they have started realising this," he says. "In certain jurisdictions like Malaysia, there's a push to scrutinise billing. It becomes a bit of a pride or ego issue for the firm when you question their integrity."

Koh says that certain types of work are now becoming fixed-fee work. "For example, drafting of certain documents and conduct of legal due diligence are now often subject to pre-agreed fixed fees, he says, adding that invoices are being greatly scrutinized at this point. "I personally do not like our law firms to incur courier charges when

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they send us their invoices and when \$800-per-hour-charge for a few hours for 'supervising' their associates for some pretty basic work," says Koh.

According to Kamdar, there is an oversupply of law firms and private practise lawyers in the market and it is a buyer's market in that sense. "However, despite this trend, firms providing high value legal services still charge very high fees," she says. "I personally would like to see fixed fee arrangements and I think this will come about as the law firms across all tiers understand the reality of the shift in the legal market and realise that their clients are demanding more predictive costs."

For Lee, the key to avoiding between law firms and their clients is communication. "If the fee goes beyond what is agreed, then law firm must let

clients know about why that has happened and what extra fee will be charged going forward," she says. "I think constant communication with external lawyers and internal clients are important to avoid disappointments or disagreements." She adds that she expects clients across the board to be able to track their spend with a law firm by visiting that firm's website.

CHALLENGES IN 2017

If 2016 was a sluggish year with little growth, lawyers of all stripes don't expect 2017 to be much better, and thus are preparing for more scrutiny on costs, and more pressure to do more with less. "One of the major challenges will be the ever-increasing workload, and another is minimising costs. Engaging external counsel will also continue to offer its challenges, says Gill." Kamdar agrees: "Given the current economic uncertainty which is expected to last over the next few months, the challenge would be to manage work assignments efficiently. I expect there to be periods of very intense work, with multiple assignments and


If you were to employ new external counsel in 2017, what factors would most influence your selection? (Top 5)

- Expertise in your industry 84%
- Favorable fees/billing policies 70%
- Responsiveness 69%
- Brand name/reputation of the law firm or lawyer 26%
- Personal relationship with the law firm/ lawyer 29%

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periods of low or no work. The challenge would be to use the down time efficiently and prioritise assignments during periods of intense activity."

Two others see compliance-related work posing challenges this year. "There is going to be an increase in compliance-related obligations and focus," says Koh. Says To: "It will be a challenge for me, given that I was trained as and have always been a contentious lawyer." 



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