



# The General Counsel Excellence Report

# 2015

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THE  
**GLOBAL LEGAL POST**

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In-house legal departments are expected to be business enablers, says Ruth Davies, general counsel of CPA Global.

# FROM MELTDOWN TO RECOVERY

Financial meltdowns create plenty of losers, but the odd winner also emerges when the dust settles. Sitting far prettier than most as businesses began to pick up the pieces in the aftermath of the so-called Great Recession of 2008 were general counsel and other heads of corporate legal departments.

Historically a place where private practitioners went to contemplate retirement and their golf handicaps, general counsel roles have become pivotal to business success, with that boost in status owed in no small part to the turmoil that beset the global economy.

Whereas 20 – or even 10 – years ago, law firms more or less dictated terms to their clients, the passion for cost cutting that gripped national and global corporations in the wake of the financial crisis has given GCs the whip hand. Whilst

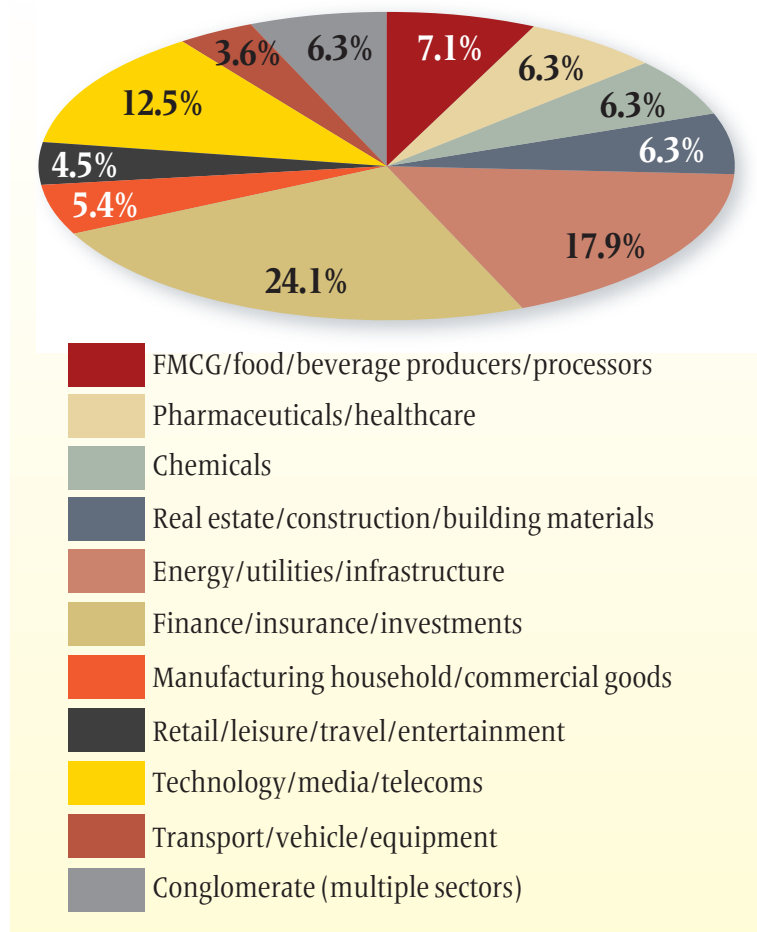
instructions may have been handed out in the past on the basis of a nod and wink over dinner down the club, the modern imperative is for impartial and highly rigorous panel selection processes.

Indeed, these pitches are so robust that major law firms now employ hordes of business development wallahs to research client needs and coach partners through the finer points of the highly competitive pitching game.

As the curtain fell on 2014, there were several major panel appointments announced. Transport giant Hitachi Rail Europe launched an inaugural panel, giving the nod to a nearly all-English group of Addleshaw Goddard, Ashurst, DLA Piper, Eversheds, Shoosmiths and Stephenson Harwood. It was reported that 13 firms had bid for places.

Also within the last few weeks, German international financial services giant Deutsche

**The predominant business sectors of surveyed companies**



Sitting far prettier than most as businesses began to pick up the pieces in the aftermath of the so-called Great Recession of 2008 were general counsel and other heads of corporate legal departments.

Bank announced the launch of its biennial global legal panel review, with the winners scheduled to be announced early in 2015. Sources close to the bank told *The Lawyer* newspaper that 'it is particularly demanding of its panel firms, and drives a hard bargain on fees'.

Indeed, in the modern panel-pitching game, everything is up for grabs: the historically sacred cow of hourly billing is today almost a taboo, and GCs are looking for added value in every respect, from regular updates on specialist areas of law, to frequent in-house lectures, to law firm associate secondments.

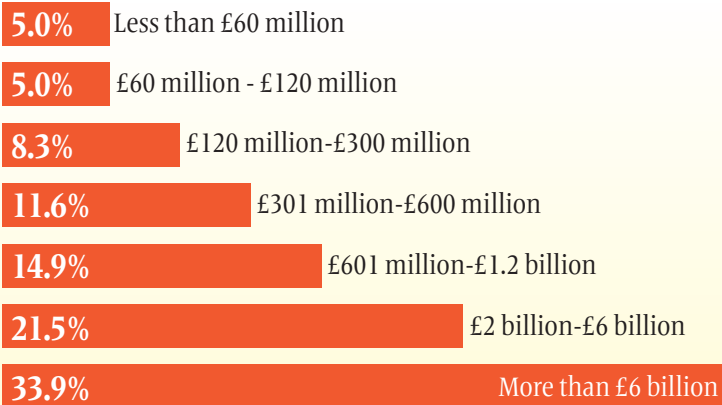
Added value is very much the watch-phrase for GCs themselves. In-house lawyers are applying the thumbscrews to law firms because their senior executives are doing the same to them. Average GC remuneration packages have increased recently in line with a their new-found status. But in return, they must perform; the old status quo and drinks at the 19th hole are gone forever.

Added value is very much the watch-phrase for GCs themselves. In-house lawyers are applying the thumbscrews to law firms because their senior executives are doing the same to them





### Annual turnover of surveyed companies



Our research last year focused on how leading in-house lawyers were coping with this rapidly evolving landscape. The report analysed specifically general counsel relationships with corporate boards and how those relations were defined. Some handled that shifting dynamic with confidence, others less so.

This year, we've continued to look at the redefinition of the general counsel role and what law firms can do to support this transition. Management of legal departments is a given for general counsel; now the corporate spotlight shines on the value-added aspects of the job – from the contribution general counsel make at the top table, to their role at the heart of operations. A plethora of regulatory obligations coming down the road will also ensure the GC role continues to gain in importance.

This year's GC survey results reveal a greater confidence from general counsel as they become increasingly comfortable with expanding responsibilities. They are also seeing their roles

### Bruce MacMillan, general counsel, Legal Practice Technologies.



'A good general counsel can add huge value to a business – it's just there aren't necessarily that many of them,' suggests Bruce MacMillan.

He adds: 'GCs' strength is they can be advisors who have a view over the top of the silos of an organisation in the same way as a chief financial officer or a good company secretary.

Potentially, the GC may be in a better position than either. 'In some ways that level of independence can be harder for

a chief financial officer, as they may find themselves heavily conflicted in certain areas.'

MacMillan also maintains that knowledgeable GCs can be a valuable addition to company boardrooms, but that is not the same as recommending they sit as directors. 'GCs find themselves advising the organisation as a whole on levels of risk and that sort of discussion could be very difficult to have for someone who was also a director.'


Instead he suggests the key GC role is that of navigator – helping the board of directors chart a course across an

increasing complicated sea of rules and regulations. 'For example, businesses need data protection licences and few organisations will operate without advertising, so they will need to be made aware of the regulations surrounding those areas.'

MacMillan also stresses the GC's role in getting the best value for money. 'Your colleagues won't trust you to advise them about their department if they don't think you can run your own very well. Part of that, for a GC, is about picking the right selection of external advisers. It's also essential that GCs are on top of their budgets and that they make sure what they are getting represents good value.

'The reasons for outsourcing fall into five categories that all begin with C: cost, complexity, capacity (if, for example, you have a shortfall in your internal resource), compliance (when you're dealing with a subject that you don't encounter very often), and certify (where you need external excellence and a premium brand has to be bought as competitively as possible).'

And GCs must always be aware of exactly who or what their money is buying. In the case of an external law firm does that mean an individual, a department or a firm? Whatever the answer to that question, the overriding principle remains the same. Does it really represent value for money?



General counsel themselves face internal pressure to perform – they must manage not only their departments, but business elements across their newly acquired portfolio – from keeping regulators at bay to protecting their boards

validated in several ways – for example, some are looking to emulate finance directors by having a guaranteed place at the board, although there is by no means unanimity on that point.

Last year's survey identified this gradually growing desire for a place on the board and how it was shaping ambitions. This year's results show the trend continuing, with one in eight respondents actively looking for a place on a board. And the vast majority (93 per cent) is convinced that having lawyers on corporate boards improves internal governance.

Likewise, 75 per cent say that structure improves corporate performance, a similar percentage says it encourages lower levels of corporate risk-taking, and 68 per cent say it results in a decline in litigation risk.

While not as well paid, perhaps, as finance directors, 58 per cent of general counsel respondents earned salaries of £100,000 to £300,000, with another 16 per cent earning more than £300,000. In addition, the top 3 per cent on the remuneration pyramid earned more than £750,000. One in four had been in the role for longer than 10 years.

The research also revealed that while general counsel said law firms were making more effort to understand business needs and communicate better with their clients, private practice lawyers still fell down on a wide range of areas, including offering better deals on fees, reducing costs by supplying outsourcing options and using technology to improve services.

The evolving role of general counsel creates possibilities for law firms to adapt their services and working styles to support the in-house legal chiefs.

It will become increasingly important for law firms to understand that improving performance and acting as partners to in-house legal departments will reap dividends as the role of general counsel continues to gain in importance and prestige. However, general counsel themselves face internal pressure to perform – they must manage not only their departments, but business elements across their newly acquired portfolio – from keeping regulators at bay to protecting their boards.

The survey showed that responsibilities of the general counsel are expanding to include director, risk manager and advisor, regulatory compliance and the leadership of legal departments, with accountability for costs and outcomes across their organisations.

These roles go well beyond the traditional scope of professionals advising on deals and disputes. The survey results suggested there is considerable opportunity for law firms better to understand how they can help general counsel fulfil these expanded responsibilities. In essence, the opportunity is to deliver services that meet management team business needs.

### Main findings

General counsel have two headline concerns over the next 18 months, according to the survey results: threats from regulators and how best to manage their departments to create value, maximise services and keep a lid on legal costs.

With regulators on the warpath globally, it is little wonder that 60 per cent of respondents said regulation and compliance are the biggest short- to medium-term concerns. While general counsel saw financial threats as the biggest risk to their businesses last year, this year compliance is equally worrying.

General counsel want private practice assistance

with those regulatory and compliance issues so their businesses can reduce risk. Law firms with the capacity to meet that need will be in demand. In a global context, deep local expertise is a key requirement.

Next on the list of GC concerns came creating value for their companies, with 35 per cent identifying this as their biggest goal. Data protection, security and cyber issues followed.

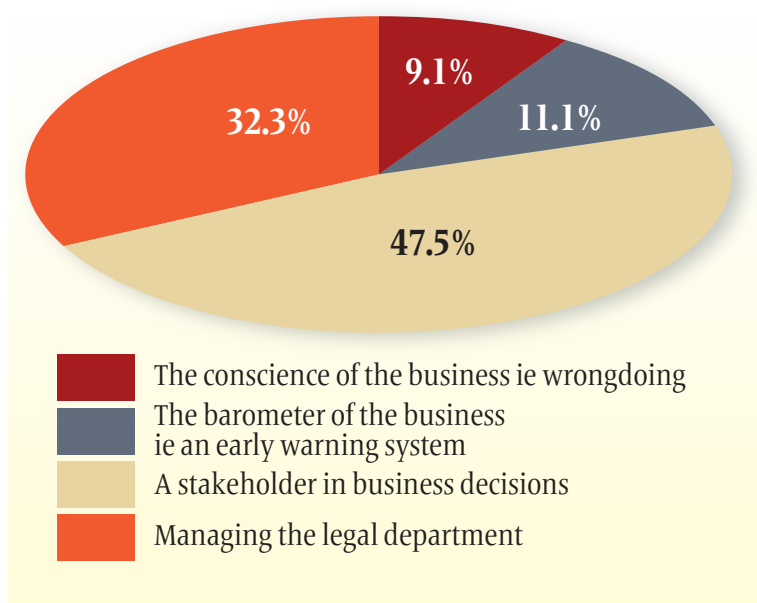
### Selling legal services

Respondents were asked about the fundamental shifts in how law firms sold services and 48 per cent said firms were offering better deals on fees.

However, two-thirds said firms were not assisting by helping with outsourcing options. Some 64 per cent of general counsel agreed that communications with external law firms have improved, but that figure sank to 57 per cent when GCs were asked whether firms understood business needs.

Some 41 per cent of respondents agreed that firms provided considerably more free internal

### Which of the following best describes your function in the company?



With regulators on the warpath globally, it is little wonder that 60 per cent of respondents said regulation and compliance are the biggest short- to medium-term concerns



## MAIN FINDINGS

support, such as secondments and training. While 51 per cent said law firms increasingly use technology to improve services.

In a time when the role of the general counsel is under pressure to deliver more for less, 60 per cent of respondents said they routinely ask external law firms for alternatives to traditional hourly billing – a significant rise from 47 per cent last year.

However, similar to last year, 63 per cent said the best way for law firms to keep pace is to have better commercial awareness of clients' businesses. About 30 per cent of respondents called for increased use of secondments, while 14 per cent argued for a broader business adviser service. And 18 per cent of general counsel called for law firm improvements in the use of technology.

On the issue of developing an in-house team's legal and business skills, 67 per cent of general counsel used a combination of internal and

external support. About 15 per cent said they dealt with training entirely in house, and about 12 per cent said they had no formal development plan. Fewer than 1 per cent of respondents said they outsourced all training to a third party.

### Relationships with law firms

About half of respondents said they use one to five domestic law firms in their home jurisdictions, while 31 per cent said they use six to 10 law firms in their home countries; 11 per cent said they use 11 to 20.

Only 5 per cent of respondents said they use 21 to 50, and 3 per cent said they use more than 50 domestic law firms.

When selecting foreign law firms, about 70 per cent of general counsel said they used recommendations from local private practices as a main guide. Some 58 per cent said they used law

### Prash Naik, general counsel, Channel 4

For Prash Naik, the relationship between an in-house legal department and its wider business boils down to this simple statement: 'It is short-sighted for any company not to derive value from its general counsel.'

Channel 4 has no in-house production, but contracts with 380-plus independent production companies. 'Our remit is to produce challenging programmes, manage risk and to advise the production companies of what we want. The legal department is instrumental in getting some of the most challenging programmes to air. We are not risk-averse, but we cannot be gung-ho either.'

Naik maintains that the C4 legal team – unlike many counterparts – actually encourages risk. 'It is part of our business and we tell the production companies how far we want to push the boundaries. Our legal department takes a can-do collaborative approach, unlike more conventional teams.

'Some of the programmes may not bring in huge audiences, but our lawyers believe in freedom of expression. While we don't break the rules, we do operate between shades of grey, and hopefully we stay on the right side of our remit.'

Naik goes on to explain the dynamic between the legal department and C4 executives. 'It is important to educate and ensure buy-in to what we do from the most senior management. Without it, what we do would not be possible. It's part of a cultural phenomenon in business. We have to ensure that the most senior people in the business understand proper risk-management, but within the context of the station's remit to push the boundaries. Being too risk-averse can be equally as dangerous as being too gung-ho. It is important that the senior management team trust the legal team. But equally we have an obligation to communicate what we are doing.'

Spending is a perennial issue for the legal department.

'It is important that we keep a watchful eye on costs. When I get an estimate from an external law firm, I want it to be accurate. It is annoying when they pitch too low to get the work – or when they come in unrealistically high. Lawyers should have a good understanding of their costs and be able to give an accurate estimate. In-house teams should not just get the cheapest external lawyers, but neither should they go for the most expensive just because the corporate has deep pockets or in the expectation that litigation costs will be picked up by the other side.'

Naik is open to pitches including novel payment methods from external law firms. Fixed fees suit some work, while capped hourly rates are more suitable for others, with discounts for bulk work. 'It is important that we pick the right external teams and find out who will actually be doing the day-to-day work. Having a partner doing a piece of work may not be the most cost-effective option.'

Ultimately, comments Naik, the role of general counsel depends on the company. 'There is a school of thought that they should be at the coalface and have a hands-on role. The more elevated they are towards governance, the less hands-on they will be. Provided general counsel have the recognition of their role from the board and senior management and are subject to oversight and scrutiny at least once a year, they do not need to be on the board. They should attend the board only as and when necessary, but good governance dictates that there should always be an avenue to speak to the board.'

Naik readily agrees that general counsel have a much more important role than in the relatively recent past. 'The old style was to be the company secretary or the advisor to the board. Now we are more commercially savvy and commercially minded – we advise not just on legal issues, but on reputation management and broader commercial and business development issues.'

firm networks, and 30 per cent used directories.

Nonetheless, personal connections and recommendations still play a large role in selecting foreign law firms. In general, the survey results demonstrate that when selecting foreign law firms, general counsel need reliable advice and guidance.

Some 81 per cent of general counsel respondents said they were in charge of selecting law firms. Only 6 per cent said procurement departments were in charge. In 5 per cent of companies, chief financial officers were in charge of law firm selection, while 4 per cent reported that the business's chief executive was directly in charge of selecting law firms.

Half the respondents said they used long-standing relationships when appointing law firms, while about 26 per cent said they favour a formal panel arrangement, whereas 24 per cent used a less formal panel to manage external law firm selection. The results suggest there is an opportunity for law firms to demonstrate the benefits of long-term relationships.

## Awarding instructions

Some 45 per cent of respondents occasionally use competitive bidding to distribute work to outside law firms, and 22 per cent said they mostly use that technique, an increase from 14 per cent last year. This year, 20 per cent said they do not use competitive bidding, whereas only 12 per cent said they 'always' use the process.

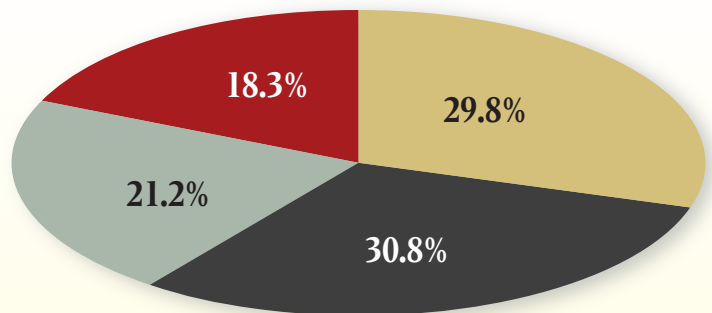
Three-quarters of general counsel said they sometimes invoked an established process for when appointing law firms, adding that it depends on the specific matter. This is an increase from 61 per cent last year.

Nearly half of general counsel said they occasionally instructed firms outside their panels, a rise from 43 per cent last year. Some 15 per cent never veer from panel firms, down from 28 per cent last year.

Expertise came top of the pile as the main consideration for general counsel when selecting law firms. Following that – in order of preference – were: price, relationship, reputation and business acumen.

When asked about what they value most in relation to client management, 54 per cent of general counsel answered knowledge of the instructing client's business activities and sector. Another 35.5 per cent said that direct contact with one responsible law firm team member – preferably a partner – was most valued, and about 11 per cent said special rates for recurrent work

## What is the biggest risk to your business in the next 18 months?



- Compliance threats (eg from politics, law, regulation and governance)
- Financial threats eg the general economic threats and the state of the markets
- Strategic threats (threats re customers, investors and those involved with the business)
- Operational threats (overall and profitable workings of the business)

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topped the list. Only 13 per cent of respondents said their law firms regularly arranged meetings to assess how satisfied general counsel were with a law firm's work. Another 40 per cent said they sometimes were invited to satisfaction assessment meetings, but 33 per cent of respondents said they rarely were. Some 14 per cent said they never have assessment meetings.

Slightly more than three-quarters of general counsel reported they are usually happy with the level of overall communication from law firms. Some 21 per cent said they are seldom happy, and only 3 per cent said they are never happy.

#### Emerging markets and risk

Three quarters of general counsel reported that their companies were engaged in business in the emerging markets. Some 21 per cent were not, and about 2 per cent said they are planning on doing entering those markets.

Only 15 per cent of respondents said they allocate lawyers from the legal department to

positions on the ground in emerging markets; and 23 per cent said they instruct local law firms. However, 61.5 per cent said they use a combination of the two approaches.

With the majority of respondents facing international legal issues – including in emerging markets – general counsel have an ongoing need to find reliable local firms in which they have confidence that an excellent service will be provided.

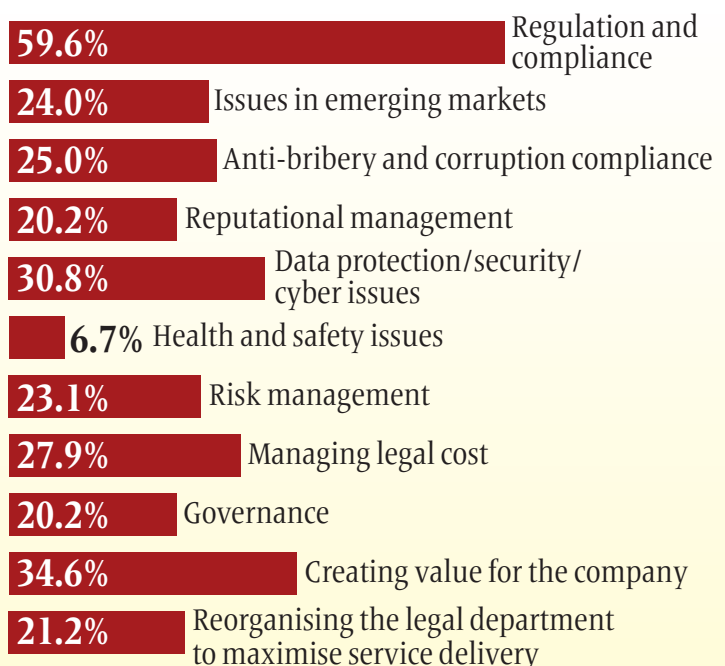
General counsels' reliance on recommendations from their outside counsel and law firm networks as well as their peers shows that law firms must be able to provide reliable recommendations. High quality law firm networks help them meet that need.

#### Crisis management

Slightly more than half of general counsel said their chief executives headed the businesses' crisis management function. Another 18 per cent said the general counsel role itself took charge of that

General counsels' reliance on recommendations from their outside counsel and law firm networks as well as their peers shows that law firms must be able to provide reliable recommendations. High quality law firm networks help them meet that need

#### Which issue are you most concerned about over the next 18 months?



issue, while 17 per cent said the head of risk was in charge. Some 8 per cent said crisis management falls to the communications director, and 5 per cent said the head of compliance is responsible for crisis management.

Half of those responding said the general counsel role is involved with their companies' crisis management plan, while 37 per cent of respondents said the general counsel position is very involved. But 10 per cent said the general counsel role was not involved at all.

The figures were far less split in relation to the role of general counsel in strategic communications. About 95 per cent of respondents reported that general counsel took a purely advisory role in relation to that activity, with only 13 per cent of saying GCs controlled that function.

### **Social responsibility and stakeholder communications**

Nearly two-fifths of general counsel said transparent and active communication is part of their corporate social responsibility (CSR) policies. But a chunky minority of 10 per cent said it wasn't, while a sizeable 11 per cent said they had no idea.

Some 86 per cent of general counsel said their companies have systems and procedures in place to ensure stakeholder communications and that stakeholder concerns are known to senior management and answered accordingly. A relatively small group, 6.5 per cent, answered that wasn't the case, while 8 per cent said they did not actually know.

About 28 per cent of respondents said they conduct a strengths, weaknesses, opportunities and threats (SWOT) analysis before entering markets from a communications point of view.

## **Michael Ellis, group general counsel, Abercrombie & Kent**

A quick glance at the destinations offered by travel company Abercrombie & Kent tells its own story. The Congo, Myanmar, Zimbabwe – these are not places for the faint of heart.

'People want to travel absolutely everywhere,' says Michael Ellis, the company's group general counsel. 'And my job's absolute priority is about being certain that our clients are safe and secure.'

The stakes can be predictably high, he adds. 'Our biggest fears are vehicle accidents and light aircraft crashes. We're working in several jurisdictions – such as Myanmar and Iran, for example – where there is going to be a certain amount of risk.'

'That said, we're very much at the top end of the market for everything and we're very selective about the providers we work with. But even a five-star camp in Africa raises questions of risk.'

Corporate governance is also an important part of Ellis' role. 'A&K is a portfolio company controlled by Fortress Investment Group and as group general counsel I look after the compliance side of the business.'

The firm's area of operations can raise specific issues in this respect, he adds. 'A country such as Myanmar is a cash economy so there have to be a lot of checks and balances and the compliance side of things is very important.'

Ellis is the first general counsel that A&K has employed and he has taken the opportunity to innovate. 'I came from a private practice background so I know how it works,' he says. 'I've been able to tell law firms not to give me hourly rates. If they're experts in their fields then they must know what something's going to cost. I tell them to give me a

fixed price that they're not going to go over. That helps with budgeting and stops costs running away. And law firms have been amenable to being told that's how we're going to pay.'

The company has also introduced technology in the shape of a billing system, which has helped keep control on costs. Ellis says: 'You might be in a situation where at the very beginning of a piece of work you've agreed with a law firm \$250 per day for an associate, but they charge you \$280. Would you notice? Our billing system would see that immediately.'

And Ellis has taken a wide-ranging view when instructing law firms. 'I've discovered that if you're careful and you get recommendations you can find incredibly good lawyers working at specialist firms who charge a lot less.'

Indeed, some of the savings have been remarkable. 'We were quoted \$300,000 by a white-shoe US law firm to do a piece of work. Another firm quoted us \$200,000. I ended up finding an expert in the field who did an incredibly good job for \$15,000.'

'I've found some excellent law firms in Myanmar and Vietnam, for example. If you speak to the right contacts in the right market you can find lawyers with specialist knowledge, who've got experience in government departments and who know all the right people and how the system works.'

And that principle of knowing who to ask which question has also paid dividends closer to home, he adds. 'I use Berwin Leighton Paisner for advice, but also for referrals. They've never let me down – they always have good contacts and have been very valuable to me.'



Another 39 per cent said they sometimes conduct a SWOT analysis, while 33 per cent do not.

Nearly 70 per cent of general counsel work closely with their communications departments 'all the time', while 20.5 per cent do so only in a crisis; and 11 per cent rarely work with their communications departments.

Some 45 per cent said the communications side of the business is an inherent factor of the legal team's strategic decision-making process. More than 90 per cent said it is an important area of the company.

About 48 per cent of general counsel said their local team is sufficiently empowered to propose and implement a communication plan in the event of dealing with a disaster in an emerging market. The other 52 per cent said they require their local team to seek approvals for each step, from key messages to changes in the plan.

### Researching law firms

Personal experience was far and away the preferred method for general counsel when researching law firms, with 94 per cent saying they use referrals from other in-house lawyers. About 90 per cent said they use referrals from other law firms, and about 72 per cent said they use referrals from others in their own companies.

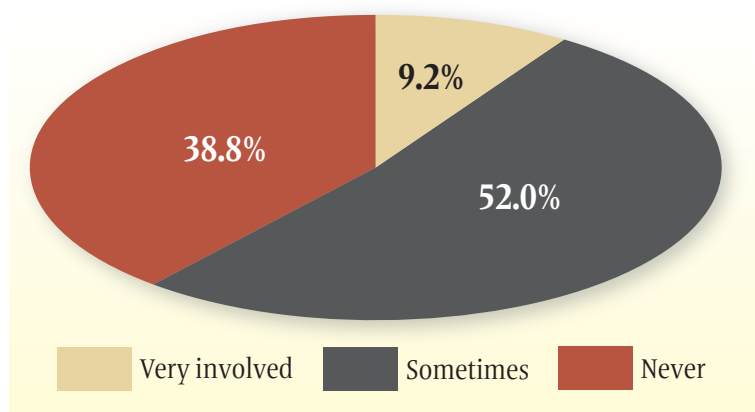
Nearly 60 per cent of general counsel thumbed through either the Legal 500 or the Chambers & Partners directories for a steer on local law firms. Some 62 per cent of respondents use conferences and seminars to find lawyers, and 55 per cent said they use law firm websites, 43 per cent said they use law firm newsletters, and 44 per cent said they use approaches by law firms.

A surprisingly high 33 per cent of general counsel used the random method of on-line search engines. While another 33 per cent checked out the legal press, and 31 per cent used referrals from accountants, 26 per cent said they used referrals from banks, and 23 per cent said they use trade associations.

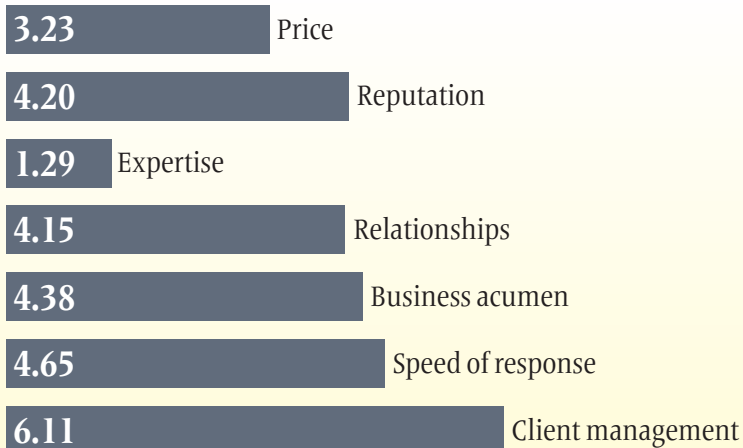
When using legal directories, 45 per cent of general counsel said they preferred to read them online. Only 14 per cent said they use printed directories, and 41 per cent said they like to use both.

Some 88 per cent said their most trusted source for researching a law firm was via a direct referral. Another 16 per cent felt their most trusted source was law firm networks, followed by law firms' own materials at 9 per cent. Some 5 per cent cited directories, and another 5 per cent said they prefer

### How involved are the business heads in allocating legal work?



### What are the main drivers for choosing a law firm in order of preference?



using the legal press. Only 3.5 per cent said they use Google as their most trusted source.

Clearly, the most trusted method for general counsel when looking for a law firm is direct referrals, followed by law firm networks. Outside firms need to have a formal or informal network of trusted firms around the world to assist their clients when they need foreign counsel.

#### E-procurement

Some 42 per cent of general counsel use tenders and auctions to appoint law firms, whereas the remaining 58 per cent said they do not.

Of those using those methods, 75 per cent said the main advantage of using e-procurement auctions was price transparency. Some 67 per cent said the opportunity to assess new law firms was the main advantage, and 63 per cent said lower fees was the main advantage.

Another 45 per cent ranked the main advantage as e-procurement auctions being more efficient than traditional law firm and panel selection.

Three factors loomed large when looking for a law firm. Some 67 per cent of general counsel cited cost and fees, in addition to business expertise.

The next most-ranked category was top-rated individuals and teams in the firm at 61 per cent. Some 41 per cent ranked firms focusing on their sector as a top three factor, and another 41 per cent ranked reputation.

About 14 per cent ranked size and reach, and 7 per cent ranked law firm brand as a top factor. Only 3 per cent ranked law firm network affiliation as a top factor, and no respondents ranked media profile.

Some 37 per cent said they always use external advisors, and about 26 per cent said they always use legal directories. Some 28 per cent of respondents said they always use law firm websites, and 28 per cent said they always use contacts in the organisation. Another 12 per cent always use a law firm network website and 8 per cent said they always use local embassies and trade associations.

### M&A, divestitures and strategic alliances

Nearly 70 per cent of respondents reported their companies had been involved with mergers in the past five years, and 72 per cent said their companies have been involved with divestitures. Additionally, 72 per cent said they have been involved in strategic alliances over the past five years.

Some 85 per cent said they are directly involved with examining the legal implications of cross-border transactions. Another 79 per cent said they are directly involved with due diligence in evaluating and negotiating purchases. And 65 per

cent said they are directly involved in assessing strategy implications of the acquisition to the structure and stance of the company.

In those companies that had been involved with mergers, about 50 per cent of respondents said they were very involved in managing the transaction. Another 64 per cent said they are very involved in choosing the law firms to act and 53 per cent are very involved with giving advice to the board.

Nearly half were very involved with dealing with regulators, and 32 per cent are very involved in the decision to do the deal.

Some 60 per cent of respondents are responsible for allocating appropriate law firms for strategic alliances, and another 60 per cent are responsible for allocating firms in divestitures. Some 57 per cent said they are responsible for allocating appropriate law firms for M&A transactions.

When asked if others in the company have an input in choosing law firms for a particular transaction, 54 per cent said yes. Some 15 per cent responded no, and 31 per cent said others sometimes have an input in choosing the law firms for a particular transaction.

Some 45 per cent of respondents said the chief executive has input, and 37 per cent said the finance director has input. Another 29 per cent of respondents said the business executives in the company have input, and 24 per cent said

### What is your most trusted source for researching a law firm?





other board members have input. On the crucial issue of legal advice costs, nearly 60 per cent of respondents said they were under pressure to reduce legal costs in the area of divestitures, while 59 per cent faced pressure to reduce legal costs in strategic alliances, and 55 per cent in relation to mergers and acquisitions.

Some 43 per cent of respondents criticised law firms for making little effort to reduce legal costs. While 37 per cent said law firms are making some efforts to reduce legal costs, and 11 per cent claimed they are making no effort to reduce legal costs. Only 8 per cent of respondents said law firms are making significant effort in reducing costs.

Some 32 of respondents said their law firm provides good value when delivering work that does not require a legal opinion, such as a contract review or legal research. Another 54 per cent of respondents said their law firm provides some value for that type of work, and about 14 per cent said their law firm provides little value.

In relation to choosing law firms for specific areas of work, 47 per cent of respondents used a panel system for allocating mergers and acquisitions instructions. Another 45 per cent used panels for strategic alliances, and 43 per cent used that method for divestitures.

Some 69 per cent of respondents said individual lawyers' reputations were very important when deciding which law firms to use for divestitures, mergers and strategic alliances, 48 per cent said the reputation of the law firm was very important, and 45 per cent ranked price as very important.

Personal relationships were ranked very highly by two in five, similar to the number who said law firms with specific specialisms were very important. Only 3 per cent ranked independent local law firms as very important when deciding which law firms to choose, whereas 37 per cent ranked it as 'important' and about 60 per cent ranked it as not important.

## Outsourcing

Some crucial survey figures suggest that the outsourcing of legal processes and services will become increasingly popular with GCs. With four in five GCs under pressure to do more for less, some 95 per cent are looking to manage more effectively their internal legal spend, with 72 per cent saying they were actively looking for service providers to provide them with a more effective and cost-efficient service.

But so far 73 per cent of respondents said they were not using legal services outsourcing, with

## Are you directly involved in any of the following?

	Yes	No
Due diligence in evaluating and negotiating purchases	65	17
Examining the legal implications of cross-border transactions	69	12
Cost-benefit analysis of acquisitions	38	41
Protecting corporate reputation during growth periods	51	30
Planning ahead and strategising the implications of the acquisition to the structure and stance of the company	51	27





that figure rising to 80 per cent in relation to legal process outsourcing.

Additionally, 79 per cent are not using business-outsourcing providers. For those using these methods, most said the factors driving them to do so included cost, price and efficiency. For those not using outsourcers, about 29 per cent said they had considered but rejected the services, and another 29 per cent said they would consider outsourcers in the future.

Of those currently outsourcing work, about 63 per cent were outsourcing litigation support. Another 65 per cent pointed to intellectual property administration as suitable for alternative providers to law firms.

Some 47 per cent said they outsourced routine work which was capable of being commoditised, and 38 per cent of people said they outsourced transactional deal support, including M&A. Another 37 per cent of respondents said they outsource legal research, and 27 per cent said they outsource document review; 21 per cent outsource

contract management and/or review.

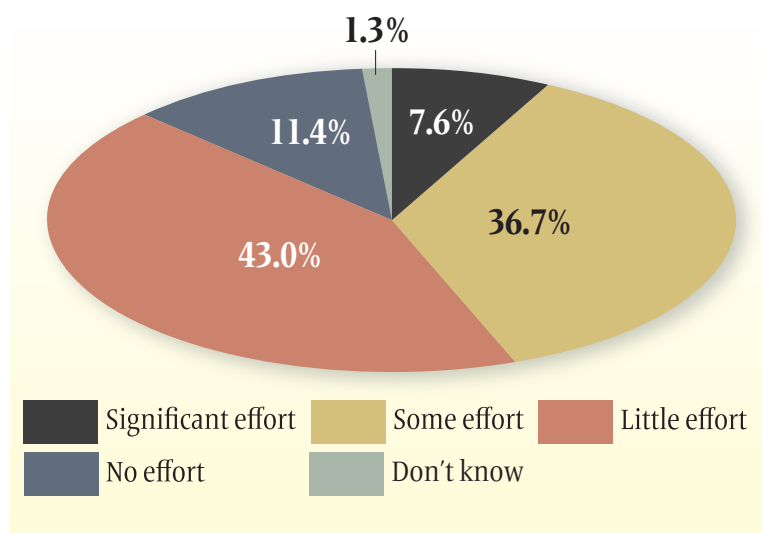
When citing the key benefits of outsourcing, slightly more than 70 per cent pointed to cost reduction. Another 63 per cent cited increased efficiency, and 27 per cent said they saw improved job satisfaction for their in-house legal department.

Some 10 per cent said key benefits included reduced risks, and 7 per cent claimed greater transparency (billing and performances).

But difficulties with outsourcing were also highlighted. Slightly more than 80 per cent of respondents said the greatest potential problem was quality, and about 36 per cent said cited data security. Another 31 per cent said confidentiality was a potential issue, and about 18 per cent pointed to privilege; 14 per cent said that conflict was the potential problem.

When asked if their legal departments have a roster of preferred legal services outsourcing providers, about 49 per cent said yes. Another 39 per cent of respondents said no, and 6 per cent

## How much effort are law firms making to reduce legal costs for their clients?



When citing the key benefits of outsourcing, slightly more than 70 per cent pointed to cost reduction

said they planned to. Another 6 per cent said they have no plans to develop a roster of preferred legal outsourcing providers.

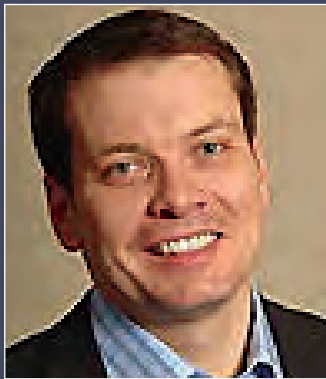
Some 17 per cent of respondents said the firms they instruct already outsource legal work on their behalf, or on behalf of other clients. Another 55 per cent said the firms they instruct do not, and about 28 per cent said they do not know.

Some 52 per cent of respondents said they would work with whichever outsourcing provider was recommended by their external law firm. Another 36 per cent of respondents said they insist that their external law firms use their preferred legal outsourcing provider. While 12 per cent said they would do something other than those methods.

About 68 per cent of respondents said e-discovery is the most suitable legal practice area for outsourcing. Another 65 per cent cited document review, and 62 per cent pointed to

So profound has been the recent evolution in the role of general counsel at leading corporations that they are now expected to contribute to a business's sales pitch

## Pavel Klimov, general counsel, EMEA, Unisys



So profound has been the recent evolution in the role of general counsel at leading corporations that they are now expected to contribute to a business's sales pitch.

Pavel Klimov, GC for Europe, the Middle East and Africa for global technology giant Unisys, says: 'Now not only are you expected to assess legal risk and find solutions to those risks, you

are also expected to add legal knowledge and experience to help the business shape its customer proposition. That means assuming a partner role on the sales side in addition to helping the business understand the risk associated with a particular proposition.'

Klimov points to an example at his own business – one of Unisys's key offerings is cyber security products. 'As part of that, we as the legal function help the business to articulate the proposition by explaining to customers the legal ramifications of not having proper cyber policies and environments in Europe and the US'.

Again, the message is all about the legal department adding value – and in this case tangible value. 'It is notoriously difficult to measure added value,' comments Klimov. 'But the ultimate criteria is whether the legal function makes the business more successful. The challenge is that we are in an increasingly competitive environment.

So simply being good at law and helping the business stay clear of serious legal issues – that is now taken more or less for granted.'

Klimov agrees that another key area in which GCs can add value to their business is by keeping legal expenditure down. But, he adds: 'There is not one model that will work for every kind of project or set of instructions. The ultimate goal is to find a structure that enables the business to view its legal costs in a way executives understand – in other words, something that is similar to the model the business offers to its commercial clients.'

And law firms could do more to help, argues Klimov. 'They tend to operate with an hourly rate model – with alternative fee structures being in some shape or form derivatives of that.'

'They don't go beyond that to look at the cost units their clients use when selling to their customers. We don't sell on an hourly rate basis. Our fixed charges will not be driven by hourly rates – there are very different elements. And those elements can be enhanced if there is additional legal cost on the project.'

According to Klimov, law firms must look beyond their historic processes and develop costs models similar to those of their customers. 'That would be of great value to in-house legal departments,' he argues. 'To be able easily to translate external legal costs into the same units that our internal customers – chief financial officers, chief operating officers – demand us to do. It would be much more predictable with a transparent structure that adds to the commercial proposition of the business.'

## OUTSOURCING

19

intellectual property work. Following were legal research (59 per cent), litigation (48 per cent), contract management (41 per cent) and compliance (12 per cent).

Some 34 per cent of respondents said they would prefer their external law firms to develop their own outsourcing captive delivery centres, whereas 16 per cent said they would rather have their external law firms work with third-party providers. However, 50 per cent of respondents said they did not know which option they would rather have their external law firms adopt.

Half the survey respondents said price was the most important reason for law firms to develop alternative sourcing and outsourcing strategies. Some 24 per cent cited improved services as the most important reason, and about 16 per cent pointed to flexibility. Another 8 per cent went for global coverage.

When asked in which jurisdictions would they be most comfortable with outsourcing legal work, 67 per cent of respondents said England and Wales. That was followed by 47 per cent saying the US, and 36 per cent choosing Australia and New Zealand.

Next in order from greatest to least, respondents



Price was the most important reason for law firms to develop alternative sourcing and outsourcing strategies. Some 24 per cent cited improved services as the most important reason, and about 16 per cent pointed to flexibility

### What are the key benefits of outsourcing legal work?



said they would be comfortable outsourcing legal work to Scotland, South Africa, India, Northern Ireland, the Republic of Ireland, the Philippines, Eastern Europe, Brazil, China and Mauritius.

Meanwhile, some 88 per cent of respondents said they have looked at the option of outsourcing to on-shore LPO providers. Some 57 per cent said want to know more about options, whereas 42 per cent said they are already aware.

Another 61 per cent of respondents said they would be most comfortable outsourcing business process to England and Wales, followed by the US and Scotland.

Next came India, Australia and New Zealand, the Republic of Ireland, Northern Ireland, Eastern Europe, South Africa, Philippines, Brazil, China and Mauritius.

### Project management

Some 82 per cent of respondents routinely analyse 'who should best do what' within their in-house

team. Of those, 73 per cent said that analysis includes de-constructing tasks and transactions to determine which type of resource should work on particular elements.

Some 75 per cent include commercial assessment of the benefit to their business of the task or transaction, and 62 per cent said they use economic assessment of the cost of the task or transaction.

Management of legal projects is fully accepted as part of the general counsel's role. Legal project management – a comprehensive approach to managing projects and an important tool in managing multiple resources from the legal department and multiple outside counsel – is becoming an important skill for in-house and outside counsel.

It can be particularly effective when external law firms have a common framework with which to organise a project.

### Rosemary Martin, general counsel, Vodafone

'Nothing should simply be an overhead,' says Rosemary Martin adamantly on the role of commercial in-house legal departments. 'Every asset, every person has to add value or they should not be in the organisation.'

Martin provides a check-list of how legal departments can add that value to their business. Leading it is a suggestion that they provide services that enable businesses 'to do the things they want to do' – for example, managing their portfolio of assets, buying and selling companies and other businesses, creating partnerships, providing legal advice that supports customer relationships, as well as supporting other aspects of a business such as supply chain management and the recruitment of people.

Legal departments, according to Martin, should aim to reduce the outgoings of an organisation by devoting energies to activities – such as compliance programmes, training, self-help tools for colleagues – that prevent legal issues arising.

Martin provides another check-list detailing the methods in-house lawyers can invoke to manage the costs of external legal service providers.

These include not doing business in certain, legally expensive, countries, investing in preventative measures, such as compliance training, focusing legal team efforts and avoiding the risk of doing work that others in the organisation should do, training business colleagues to do more for themselves in the legal arena and ensuring the organisation's law firms are providing services efficiently.

That translates to support for alternative fee structures to hourly billing. 'I am open-minded as to what fee type is best for a given scenario,' says Martin. 'Where possible, it's good to have certainty at the outset as to what the bill will be.'

Martin also points to an almost socio-political role by suggesting that general counsel should aim to shape 'the laws and regulations that impact on an organisation's ability to do business'.

How should GCs engage with senior executives to avoid risk and litigation? 'GCs need to have a good feel for what needs to be prioritised,' says Martin. 'Not all risks and litigation can or should be avoided. The GC needs to be able to assess whether a risk or piece of litigation is likely to harm the business significantly as, obviously, that type needs to be avoided where possible.'

'GCs need to engage with senior executives in a way that results in executives seeking out their advice before it is too late and in a way that ensures the GC will be listened to when it really matters.'

But Martin is ambivalent on the issue of whether GCs should sit on corporate boards. 'It is a matter of personal choice for the GC,' she says. 'GCs can make effective non-executive directors as often they understand how businesses work, they can assimilate a lot of information quickly and they have good analytical skills.'

'Some are big fans of higher profile board involvement, others not. Is being on the board the best route to increasing the profile of GCs within a business? Not necessarily.'



## Harry Trueheart, Chairman and CEO, TerraLex, Chairman Emeritus, Nixon Peabody LLP



There is little doubt that the relationship between legal departments and their suppliers has changed irrevocably. Notwithstanding an improvement in market conditions, the pressure on general counsel to

manage legal spend more efficiently while dealing with an ever increasing workload is as great as ever. But what can law firms do to support general counsel through this transition? Harry Trueheart, Chairman and CEO of TerraLex and Chairman Emeritus of Nixon Peabody gives his views on the findings.

**GLP:** How can law firms respond to the changing dynamics as revealed in the survey?

**Harry Trueheart:** The evolving roles of the General Counsel create both a challenge and an opportunity for law firms to adapt their services and working style to support the General Counsel in those new roles.

The survey shows that the responsibilities of the General Counsel are expanding to include director, risk manager and advisor, regulatory compliance responsibilities and the leadership of legal departments. With that leadership comes accountability for costs and outcomes that contribute to the success of their organizations.

These roles are well beyond the traditional role as working professionals who give advice, do deals and resolve disputes. The survey results suggest that there is considerable opportunity for General Counsel and law firms to better understand how they can work together to deliver services that meet the business needs of the company as seen by the management team.

**GLP:** The major concerns for general counsel in the next 18 months are roughly divided between threats from regulators and managing their departments to create value, maximise service delivery and manage legal cost. What can law firms do to help on this front?

**HT:** Helping clients to see around regulatory and compliance corners – looking ahead to help clients reduce risk- as well as helping clients resolve

regulatory issues is a clear need of General Counsel. Law firms with the capacity to meet those needs will be in demand. In a global context, deep local expertise is a key requirement to understanding and managing regulatory and compliance risks. In addition, regulatory and compliance risk is increasingly a multi-jurisdiction issue and general counsel need outside firms that can work together to help clients develop integrated responses.

**GLP:** When selecting a foreign law firm, about 70 per cent of respondents said they use recommendations from local firms as a main criterion. About 58 per cent of respondents said they use law firm networks, and about 30 per cent said they use directories as criteria. Internet usage is marginally up with 11 per cent of respondents said they use the Internet. However, it seems that personal connection and recommendations still play a large role in selecting foreign law firms. What is your view on that?

**HT:** Survey results reflect longstanding factors in selecting law firms but also reflect changing needs and changes in available resources. Generally speaking general counsel need reliable input from others to help assure they are making the right choice. The need to meet multi-country needs with coordinated resources explain in part the use of law firm networks as a reliable source by the majority of general counsel responding to survey. Highly selective networks that oversee the quality of their membership and whose members are used to working together in a coordinated way can be a valuable resource to general counsel.

**GLP:** When asked about managing external law firms, 50 per cent of respondents believe in long-standing relationships. About 26 per cent of respondents said they use a panel arrangement whereas 24 per cent said they use a less formal panel to manage external law firms. What does this say about the relationship between general counsel and their external suppliers?

**HT:** The survey results show that the majority of general counsel recognize the value of continuing relationships with their outside counsel. While there is some divergence in results in some areas, the need for closer collaboration from outside counsel in understanding the client's business and future needs is evident. Half of the respondents rely on long-term relationships with firms and a quarter focus their work on a limited number of firms on their panels.



These results suggest the continuing need and opportunity for law firms to perform at a level that demonstrates the benefits of long term relationships.

**GLP:** When dealing with emerging markets, about 15 per cent of respondents said they allocate lawyers from the legal department, whereas 23 per cent of respondents said they use local law firms. Dealing with emerging markets is a challenge for most legal departments, according to the research. What's your advice on this?

**HT:** I believe the survey results reflect in part differing levels of needs in these markets. Generally, where the local needs are high enough, in house counsel will be assigned to meet as much of that need as possible. In all situations, the vast majority of respondents having international legal needs, including in emerging markets, will need a mix of both in house and outside local counsel advice in meeting those needs. The key criteria are reliable firms with deep local knowledge. General counsels' reliance on recommendations from their outside counsel and law firm networks as well as their peers in finding those firms, show that outside counsel need to have the ability to provide reliable recommendations. High quality law firm networks can help them meet that need.

**GLP:** Personal experience is the most important factor to general counsel when researching law

firms whilst 94 per cent trust referrals from other inhouse lawyers, and 93 per cent the legal department. Law firm websites are trusted by 55 per cent and 16 per cent said their most trusted source was law firm networks. What is your view on researching and finding a law firm?

**HT:** My experience is that each of the factors mentioned play a role in making choices, depending on the needs. Referrals from other in house counsel or prior experience in a law department are of course important but bear in mind most experiences are limited to particular matters and particular lawyers. In looking for a lawyer or a firm, clients are increasingly looking for specific capabilities. Quality law firm websites that detail the specific experience of firms and lawyers, can be very helpful. Law firm networks with selective membership and oversight provide another useful resource. TerraLex, as an example, maintains a publicly available search engine that allows general counsel to search across its entire membership for firms and lawyers with relevant experience. It is clear that outside firms need to have a formal or informal network of trusted firms around the world to assist their clients when they need foreign counsel.

**GLP:** Whilst relatively new to law firms, project management is a key area of expertise for legal departments with 82 per cent of respondents saying they routinely analyse 'who should best do what' within their in-house team. About 75 per cent said they include commercial assessment of the benefit to their business of the task or transaction, and about 62 per cent said they use economic assessment of the cost of the task or transaction. What is your view on legal project management?

**HT:** Management of legal projects is fully accepted as part of both the general counsel's role and a that of outside counsel. Legal Project Management, a comprehensive approach to managing projects and an important tool in managing multiple resources from the legal department and multiple outside counsel, is an essential skill for in house and outside counsel to have. It can be particularly effective when the firms on the team have a common framework with which to organise a project. TerraLex and its members continue to develop project management tools in response to the drive for efficient, high quality service. Project management training has been a frequent topic at TerraLex Global Meetings.



## Judith Shepherd, group legal counsel, Barclays



Legal advice is a bit like a drug for senior business executives – the more they get, the more they want.

Judith Shepherd wouldn't put the analogy quite so graphically, but she agrees wholeheartedly with the sentiment.

'The more the business interacts with lawyers the more they want to. After initial barriers have been crossed the business welcomes legal counsel and spends more time with them. If you find an area of business that is resistant to legal help it's probably because they haven't had much interaction with the lawyers.'

In common with the vast majority of GCs, Shepherd says that employing general counsel is all about adding value. 'It is actually an underrated asset to have an in-house legal team. They are far more than just legal advisers and can advise on wider issues, for example reputational risk and conduct risk. Including lawyers often provides a contrasting way of analysing things in business discussions.'

'Those within the business can be too close to an issue to ask themselves the right questions when making decisions – lawyers are good at analysing the questions that need to be asked. It is a system of partnership. We are there to support the business and are happy for the business to bounce ideas off us early on.'

Shepherd warns that senior executives at a business historically have left it far too far before seeking legal advice. And by the time they do, 'it can be an unhelpful interchange – their barriers go up if we cast down their idea'.

She adds: 'Lawyers are often shy about offering their advice to the business; they fear it may not

want to hear what they have to say. But if they have a positive approach and speak the language of business, the advice can be empowering for the business. It is important to speak their language because if the business can see that we are business-like, they will be more inclusive.'

There are three main cost drivers, says Shepherd. 'Risk, and for our business that will not be going down any time soon. Unit cost – the cost of the law firm panel. You can do a lot to consolidate spend, building fee structures, discounts, using the full range of sourcing strategies. It's a balance between demand and efficiency. I want the external firms to give value for money and be efficient, but I also want them to jump to deal with any problems when I have them. I do also consider what we can do to make their lives easier and I always ask them about this. There is also the unit cost of the internal team. It is important to keep that under review and ensure jobs are being done by the right people at the right level of seniority.'

The third cost driver is demand, says Shepherd. 'I am keen to develop management information – it is important to understand what costs drive the internal and external legal spend and to consider how to simplify the instructions. That is especially true for a large organisation. There is lots of information that we need before we can start drafting. If the business can do it on an electronic template it saves time. We have automated a lot of the production of our customer documents, which makes it easier for us to deliver a good service and track progress of documents.'

Shepherd is also a keen buyer of fixed fee work and sliced prices. 'We break down instructions into blocks of work and firms pitch per block of work. We do a lot of work with the panel firms to make sure we get the fixed fees right.'

'In some big matters that will take years we ask firms to quote a price for the year, which we pay in 12-month installments. It has the benefit of certainty for us and for the law firms. If things depart wildly from what we expected, we can alter that price and will review it for the next year; we wouldn't expect the law firms to take all the pain. We work with the firms. If they come up with good ideas, we share the benefit.'

Should lawyers step up to the boardroom? 'Lawyers have the skills to be on boards, but it is better for them to be in attendance at the board, rather than on it. Being on the board can mix up their role. It is the sort of person you are that gives you a profile, not whether or not you are on the board. The lawyer's primary role is to provide legal advice – whatever else you do must not take away from that.'



## Ruth Daniels, general counsel, CPA Global



In-house lawyers should be 'business enablers' and not 'blockers', says Ruth Daniels. And while that sound like management jargon, Daniels supports the supposition with elaborate argument.

'As commercial and competitive pressures grow, corporations are increasingly expecting their legal teams to be

business enablers – dispelling perceptions of legal as business blockers and helping create an environment in which their organisations can respond swiftly and in an informed manner to changing business dynamics. In many organisations today, the legal team is already far more involved in the broader business strategic agenda and, as a result, has moved up the value chain.'

For that transformation to happen, argues Daniels, in-house lawyers need to act as business partners. That means 'thinking commercially and driving process improvements so they are freed of the more repetitive administrative work to focus on more strategic, business critical matters that warrant higher-level legal input. In such an environment, the ability to maximise both the efficiency and effectiveness of the in-house legal team is all the more important, especially for a global business.

'By taking a broader view and adopting a more holistic approach, legal teams can get to the heart of the business, raising awareness and understanding of their role, while reinforcing the value the teams can deliver to their organisations.'

Daniels acknowledges that balancing tensions between managing risk and running a commercial business in a highly competitive environment can be challenging.

'People think of risk management as putting a straitjacket on the business; it's not. It's about ensuring a company is best placed to succeed and maximise opportunities, and that it is not prevented from doing so because it has failed to identify business, market, or legal and regulatory risk that could have a damaging effect on the company.

'This is where the legal team needs to work closely with senior executives in the business to develop a robust risk management strategy and establish appropriate responses and controls. Many pieces of litigation could be avoided if things were properly managed earlier in the process, in particular around communications with third parties.'

Nonetheless, pressures remain on legal departments to cut expenditure – and not surprisingly as the lawyer to an outsourcing business, Daniels sees potential in that technique. 'The commoditisation of legal work, increased availability of on-line legal resources and more innovative legal support services providers are together giving in-house teams a greater choice of resources and helping drive more cost-effective and creative solutions. The

outsourcing of legal support services is now moving into areas of greater sophistication with a better understanding of how it can assist in-house teams.

'However, as with technology selection, it is important that you fully scope out your requirements and deliverables and what the measure of success will be. It is not just about cost, but about providing the right solution in the most effective way.'

Daniels is also a fan of alternative fee arrangements, which she describes as being 'on their way to becoming a standard offering within the legal services market.

'For many law firms, the ability to offer alternatives involves working with third-party legal support services providers, which helps keep their costs down – savings that can be passed on to their clients. The best results are achieved when there are highly collaborative relationships between in-house counsel, their law firms and other service providers. These are typically constructed on a bespoke basis in order to serve differing client requirements. They should be seen as collaborative business plans that are created to meet individual and mutual interests. Part of the plan should always explore where the outside providers of legal support services can be utilised to optimum effect.

But Daniels is not blind to the fact that alternative models are not always appropriate. 'While they can work very well for many of the standard or more commoditised services, when it comes to high level legal advice around a major business-critical or regulatory/compliance issue, companies are less likely to quibble about hourly fees – particularly when the advice and action of the law firm saves them from expensive litigation or punitive regulatory action since that is more of a perceived value-add.'

Daniels is also cautious about general counsel sitting on boards. 'There are a number of factors to consider – not least the company's level of growth and maturity and the view of the executive management team, their perception of the role of the legal team, and their comfort level with delegating certain legal responsibilities.

'Much will also depend on how the leadership team and board of directors wish to be updated on legal and regulatory matters. In a more mature business environment, where the management team has a clear understanding and expectation around what a legal team can bring to the table, the organisation is more likely to have a well thought-through and integrated legal function with the GC as an integral part of the executive management team – and, in some cases, the board too.

'What is absolutely fundamental is that a legal team is structured in a way that is aligned with the strategy and priorities of the business. The team must be focused on ensuring that its activities are supporting and delivering value to the company and that it is not operating in isolation.

'If GCs and their legal teams want to be seen as true and credible business partners, they need to be fully integrated into the business, understand its commercial drivers and be aligned to the business strategy and priorities.'



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