

LexisNexis India

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Transforming role of In-House Counsel *From Business Lawyers to Business Leaders*

The role of in-house Counsels in Corporate sector in India and globally has undergone a sea change in the last two decades. With the commencement of liberalization and globalization in early 1990s and with number of regulatory compliances increasing, role and scope of In-house Counsels in Corporate Sector has increased substantially.

On the one hand they are valuable members of management teams, and on the other, they are also the conscience keepers of their organizations, responsible for advising on compliance issues of regulations and statutes. This role has become increasingly sophisticated, although with liberalization, some restrictions have been removed while regulations have been made more stringent.



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1. INTRODUCTION

The community of in-house lawyers is a diverse one: big teams, small teams, specialists, generalists, regulated businesses and unregulated businesses. When listening to the market to identify trends, this richness can mask how the market is shifting. But there is a shift in play at the moment, and in some legal departments it is subtle, in others it is seismic. While some in-house teams see difficulty and danger in this change and these new demands, others see opportunity. This is a time for in-house counsel to evaluate where they are on a spectrum of change (which runs from change resistant through to change leader) and choose what sort of impact they want to

make in their organisations. At LexisNexis we think this shift will not be easy and is discussed at length by this white paper based on several global surveys and research carried out by LexisNexis and LexisNexis UK's In-house advisory board discussions.

The in-house lawyer role has never been more important and challenging than it is today. As well as functioning as the legal conscience of the organisation, the in-house lawyer manages legal risk, provides important advice on a wide range of legal issues, and endeavours to deliver commercial value for the organisation. Furthermore, workload is increasing in volume and complexity in an era of cost containment.

2. WHAT TODAY'S IN-HOUSE COUNSEL ROLE DEMAND?

In-house counsels are paid to discern the company's strengths and vulnerabilities and to try, as best they can, to forestall crises before they occur. Effective General Counsel have always managed this role well, but in recent years, it has broadened far beyond narrowly defined legal matters to encompass such things as risk, compliance, finance, regulation, Human resource and business issues.

a. Why has the In-House counsel's role broadened?

Factors like globalization, regulatory expansion, rising stakeholder expectations and rapid technological change have made companies more complex. Skills are at a premium in all areas of business, in particular in the field of risk management, a corporate function that has become more and more important as companies face a growing array of challenges. Hence technical expertise in legal matters has become valued increasingly highly for its particular perspective on business, whether it is to conduct, corporate transactions, or contract law. But the key driver over the last couple of years is the complexity of transforming legal knowledge into business decisions. As corporations grow more intricate and finely tuned, managing them becomes harder in terms of presenting their thoughts in commercial language, so that they can address business issues on an equal footing with the heads of IT, marketing, procurement, and so on.

This transition requires a shift in the mindset and behavior not only from the in-house counsel but the wider organization, if the value that in-house counsel can bring to the top table is to be maximized.

b. What today an In-House counsel's role demands?

Today an In-house counsel finds that a growing proportion of their work is not strictly involved in legal matters but in commercial decision making:

- Which basic, generic terms will need to be included in the employment contract
- Which terms relevant to the specific business should also be included in the contract
- Greater numeracy skills and more business acumen to be able to give strategic inputs
- Caution and support for business expansion, diversification, mergers and acquisitions
- In the field of industry and construction, the in-house counsel will need to have specialist knowledge of the relevant health and safety rules and regulations.
- In the field of insurance, the in-house counsel will need to be fully conversant with the law governing the provision of insurance, and the insurance policies of the business within which they work.

- In the field of intellectual property, the in-house counsel will need specialist knowledge of the intellectual property, trademark and patent matters that are of concern to their particular business.

c. Key measurement factors

In-house lawyers are strongly unanimous that the need to deliver legal services more efficiently is a critical priority for their department, with 84% of in-house lawyers indicating that improved efficiency was important.

Key drivers for in-house lawyers are:

- Increasing workloads;
- The pressure to demonstrate value to their organisation.
- Key drivers leading to investments in efficiency;
- Measures that have been tried, tested and proven least successful and otherwise;
- Barriers to investment; and
- Future industry expectations

3. HOW ARE YOUR BUSINESS AND INTERNAL CLIENTS CHANGING?

Internal clients are more demanding, particularly when they are being charged internally for support from the legal department. There was recognition amongst participants that the single biggest source of pressure was the need to go ever faster, and a real concern that things would never again be any slower than they are today. For those participants in growing businesses, while resource constraints were being slightly relaxed, any increase in headcount and/or budget was not proportionate to the growth in business, leading to an overall reduction in the legal function in real terms (for example when looking at the ratio between number of deals and lawyers to support those deals). This challenge is made more acute by a perception that the legal team is becoming better resourced, and therefore should be able to provide a better level of service.

As businesses grow and diversify into new products, markets or geographies, the complexity of work for the legal team is increasing rapidly. Often this complexity is not apparent to internal clients, and in-house lawyers who endeavour to keep things as simple as possible for their clients may find it hardest to manage expectations. The complexity often also means more interaction with different parts of the business, with legal often expected to be the defacto project manager, a role which many teams are not resourced or trained to do effectively. However, one significant benefit to come out of this expectation was the view that legal is held across the whole organisation, and how

the function has the ability to act as “glue” across silos and dysfunctional matrix teams.

Over the past five years, many teams have been mandated or at least encouraged, to retain more work in-house to keep external spend down. As work becomes more complex, this attitude was perceived to increase the risk profile for the organisation, particularly if the lawyers did not have the information budget required to get the tools they needed to undertake this work effectively.

Participants also identified changes in the role of the in-house lawyer, and significant differences between teams, perhaps illustrating different attitudes to change. One group compared their business to a car, with participants variously identifying their role as lawyer as the airbag, the speedometer, the brakes and the speed camera. While this identified very different approaches, one common belief was that the role of the in-house lawyer needed to be revisited and clarified, and this was a conversation that several of the participants planned to take back to their stakeholders.

The changes in the business also raised questions of how in-house teams are responding. Some were focused on problem solving, others on embedding themselves deeper into the business with a third group looking further ahead and looking to manage demand and add more value by anticipating

what the business would need from legal in the near future.

Finally, some specific challenges for in-house teams were identified. In particular where change required people to move around the business, there was a tension between

efficiency and flexibility as departments could quickly lose tacit knowledge and effectiveness where someone who knows how to do a job effectively moves elsewhere in the business (or leaves altogether). Where the business had these significant knowledge gaps, it can often be hard for lawyers to do their job effectively.

4. WHAT CAN HAPPEN IF A LEGAL TEAM DOESN'T / DOES RESPOND EFFECTIVELY TO CHANGE?

a. Doesn't

"If you don't respond to change: you can become deskilled, sidelined"

The legal team would simply become irrelevant or side-lined, with business simply progressing with less and less input from lawyers. If this happened, it could take years to re-establish the value of, and relationships with, the legal function. In the current context of cut throat competition people and teams would have to make way for others to come into the organization if one is not adaptive to changes. There was a widespread belief that this progression would also not be in the interests of shareholders, with reduced legal input leading to a very different risk profile, and one which could in fact damage the company's bottom line.

Flip side: Outsourcing of legal department

This can present two different scenarios. Wholesale outsourcing of a legal team, perhaps through a deal shaped by the CEO or CFO, rather than the in-house counsel. The other, "outsourcing by stealth", where more work was given to proactive law firms by the business, meaning that the in-house team was left with less challenging work, which in turn would mean the better lawyers would leave and look for alternative roles, and their headcount would not be replaced. However this might lead to personal impact, where counsel do not respond to change, and over time lawyers would gradually become deskilled, as well as de-motivated.

b. Does

The in-house counsel / legal teams who adapts to the change will be there for the businesses and add real value in terms of future proofing the company against odds.

Help ready the business for change

Some participants work closely with their clients to help ready the business for

forthcoming changes. These lawyers talked not just of monitoring upcoming legislation and industry regulation, but also on reviewing competitors' annual reports and industry

benchmarking material to work with commercial colleagues to anticipate changes in market practice.

Facilitate change: “straw man”; process and technology

Where a need for change was identified, the in-house community had some very tangible ideas of how to facilitate that process. One approach was to start

with a “straw man” of the new way of doing things, and use this to demonstrate “how we can do things better”. This has proved effective at getting buy-in from business colleagues and starting them on their journey. However, in some cases, a less collaborative approach is required to change behaviour in the business, and participants talked about using process and technology to enforce different behaviours in business colleagues

The importance – and challenges – of the helicopter view

Once again, the importance of the legal team having a view across the organisation surfaced, and this, coupled with the fact that the lawyers would often have early visibility of changes (as restructurings and M&A activity will typically have a significant legal component), put the legal team in an advantageous position. However, one downside to be cognisant of, is the fact that this can mean that the legal team are actually further through the change curve than their colleagues who have less notice of what is happening

The benefits of being structured and precise

Several participants mentioned the importance of communication to successful organisation change programmes, and this is an area where lawyers, with their ability to be very precise and structured with language can really help their businesses.

Prepare the legal department itself

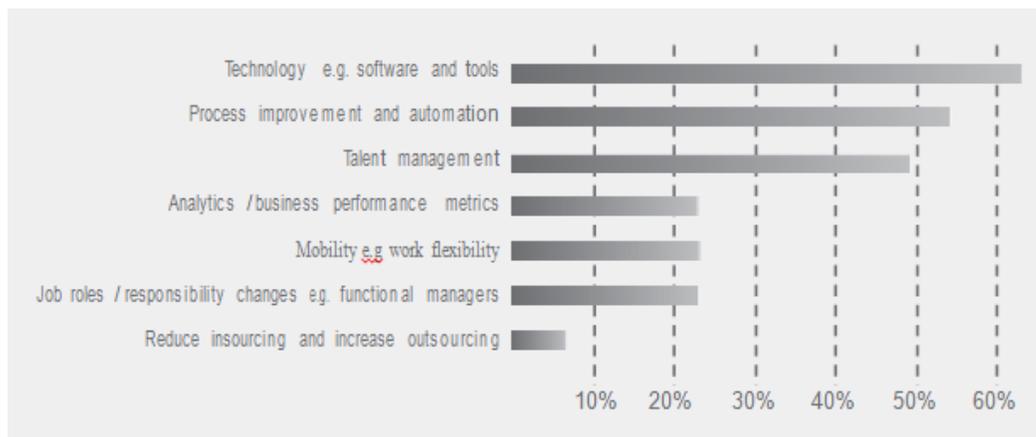
Another aspect of change readiness was to prepare the legal department itself. Here there was a belief that it was important to set expectations that team members need to be flexible. The manager should be a good role model and demonstrate how they operate in the business, are proactive, embrace and pre-empt change. Several participants also talked about maintaining a constant dialogue around change and helping people get used to frequent, smaller changes which they found effective in preparing their colleagues for bigger changes to come. A critical part of readying the legal team for change was understanding the importance of communicating strategy and vision. The changes must be put in the context of the business’ strategy and performance, which in turn helps explain not just the rationale for the change, but also the desired impact. This context setting can also help remind the lawyers that they are part of a larger team, and everyone is ultimately pulling in the same direction – to build a better business.

“Why should I change?”

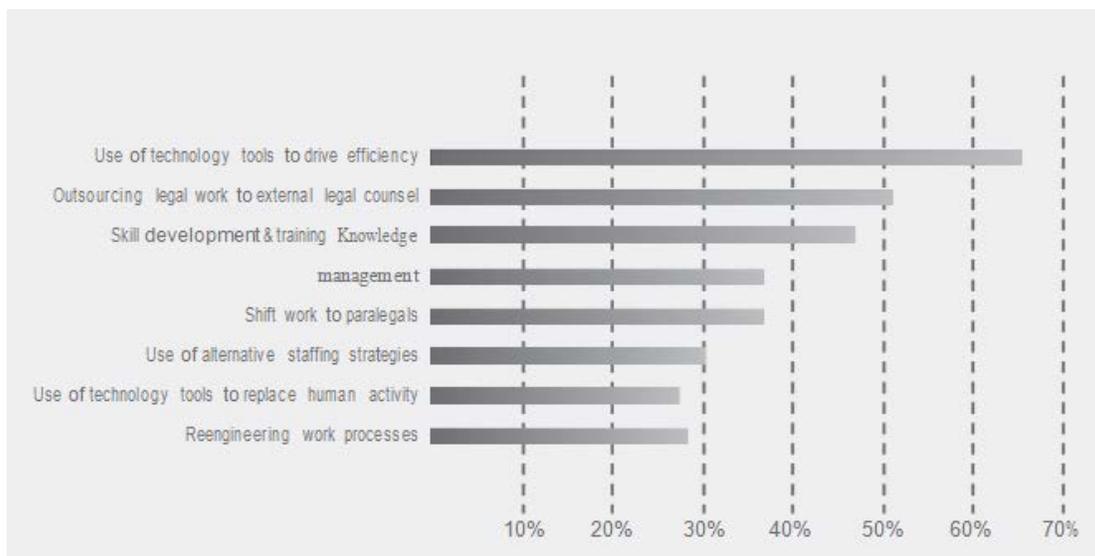
In facing change, the importance of the personal dimension was stressed – the question “why should I change?” is not just about the business, but also the individual. Rather than focus on the downside, what are the upsides of change? Self-awareness is critical here, and delegates were challenged to consider the impact of their mindset on their response to change.

How can you best prepare your colleagues for change?

The areas that we believe will provide the best opportunity for in-house counsel to develop in future:



A survey conducted by LexisNexis shows many companies have already started the exercise of developing their in-house legal teams and warranting their stance as a decision maker.



5. MANAGING STAKEHOLDER RELATIONSHIPS

The advisory board recognized that once these capabilities are in place, the development of relationships with key business stakeholders becomes critical. In a law firm environment, the clear hierarchies and departmental structures are unlikely to have forced lawyers to really practice identifying and developing stakeholder relationships.

Nevertheless, the ability to identify;

- a) which relationships need to be built; and
- b) how and when to build them is critical to success - particularly in larger, more complex businesses. Stakeholder mapping was mentioned as a practical way to think about this challenge.

A common scenario is that the leader of an in-house legal function may have developed strong personal business relationships by virtue of status, profile and longevity. The outcome in this scenario is often that the leader is valued by the people with whom he/she has the relationship, but the legal function he/she runs is not. By contrast other functions are better “sold” within the business, and legal can be easily outplayed in the competition for resources and executive support.

This scenario is by no means universal. One advisory board member makes stakeholder management part of the appraisal process for in-house lawyers. Success is measured through stakeholder feedback and observing business relationships. Other board members encourage or require in-house lawyers to work in business functions at an early stage – for example, a secondment to the strategy department for 6 months, placing junior lawyers in the sales teams for a period, or pushing new recruits through the corporate graduate programme.

However it was acknowledged that while this approach is key to growing value and “un-training” private practice lawyers, it is not widely adopted. Some junior lawyers are even penalised for spending too much time “on the shop floor”. In these cases a shift in focus and mindset is required from the leaders of in-house teams.

6. BRIDGING THE GAP BETWEEN PRIVATE PRACTICE AND IN-HOUSE

The advisory board recognised that developing genuine business insight is a critical first step before encouraging in-house lawyers to develop closer relationships with business colleagues.

However, the vast majority (>90%) of in-house lawyers are initially recruited from private practice. While they might advertise commercial awareness on the CV, they are less likely to have developed the skills necessary to truly understand their business in a way that helps them add value.

This knowledge and experience gap might include:

- Understanding the business model of a “non-legal” business
- Working with, influencing and motivating people outside a law firm hierarchy
- The operational and procedural side of working in a “non-legal” business

The Advisory Board noted that to some extent this gap might be narrowed through

identifying and hiring those with either existing skills, or a personality that is likely to support the development of those skills.

This personality might typically be demonstrated by:

- An instinctive curiosity about how the business operates
- An ability to use this insight to ask the right questions to business colleagues
- A natural tendency to then think about what the lawyer can do to help

One board member queried whether individuals who do not possess these skills could be trained. The answer that emerged from the group was that while the core capabilities must be there – not everyone can do this – they can and should be the focus of development and training for in-house lawyers.

7. WHY IDENTIFYING AND NURTURING VALUE IS CRITICALLY IMPORTANT

In-house lawyers are facing extremely challenging times. The cliché of “do more with less” is not losing its imperative urgency through repetition in the market. Time, money, energy and focus are often in very short supply.

Against this background, the advisory board considered whether growing the value of the legal team should be a priority. Does it matter, or is it just an irritant?

Today, businesses are undergoing massive transformations. The outsourcing revolution has blown through HR, finance, IT, procurement, sales and almost all other key functions. Externally, the legal profession is also undergoing fundamental changes, and external providers of legal services are looking for ways to deliver more to senior business stakeholders (not necessarily via the in-house legal function).

The advisory board agreed that far from being an irritant, a focus on value is critical to keeping the legal function alive. The twin drivers of change – demands from the business, and competitive pressure from law firms – are forcing the issue.

There was consensus that the vast majority of the work of an in-house lawyer is not about the technical practice of law in the way it is commonly understood. Rather, it is about influencing business stakeholders – asking the right questions. From this perspective, a focus on developing core business capabilities is fundamental to the role of the in-house legal team.

8. THE VALUE PROPOSITION OF THE IN-HOUSE LEGAL TEAM

There is a maxim in business: *“Your customer is your customer’s customer”*. It is one thing to develop relationships with business stakeholders – and this is important – but the next step in the journey is to connect with the end users of their product or service.

Do you know your business strategy? Do you understand what happens when something goes wrong?
Do you understand what the customer needs from you?

Have you developed a value proposition for your legal team? Have you asked your business what they think this is?

HR functions have undergone this process already. A lesson to be learned is that best practice is not as important as best fit – what do my stakeholders need?

The advisory board meeting ended on a challenging note. If growing value is important, who is going to fix it? Who is going to drive the change in in-house legal teams, if not their leaders?

9. WRAP UP

In closing, the discussion turned to the overall change landscape for in-house legal teams. Were external law firms becoming more aggressive competitors or would their own change resistance and lack of agility prevent this? Were the people to worry about the ones that the profession don't see coming – possibly sitting in a business school or computer science lab right now? Human Resources and Finance departments in corporations have all been through that transformation in recent years – it is unrealistic to think that legal teams are the only part of the organisations that won't change.

It was clear from the session that lawyers are well placed to deal with change, if they have the appetite to do so. Well respected and often privy to organisational change before peers outside the legal department, their view across the organisation gives them a unique perspective on what is happening. Assertive and able to communicate well, lawyers have all the tools to lead and implement effective change both in their own teams, and working with other colleagues, across the wider organisation. Whether they do so will depend on a number of things, but the mindset of the individual lawyer and their own personal level of comfort with change will undoubtedly play a critical part.

10. LEXISNEXIS TRANSFORMING IN-HOUSE COUNSELS INTO BUSINESS LEADERS

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This whitepaper was developed from a LexisNexis UK In-house Advisory Board discussion that took place in February 2013 and additional research conducted by LexisNexis globally in 2014. The LexisNexis In-house Advisory Board combines the expertise of first-class in-house lawyers with the LexisNexis UK In-house team. The Board aims to keep abreast of any developments, issues and challenges affecting in-house lawyers so as to guarantee that LexisNexis remains attuned to the needs of in-house lawyers and current market practice.