

Cross-Border Conversation: The Challenges Faced by In-House and External Counsel Today



On 25th May, 2021, the Singapore Corporate Counsel Association hosted a virtual cross-border roundtable sponsored by Meritas, the premiere global alliance of independent law firms. The event, which was a strategic collaboration between the two organizations, focused on the challenges faced by in-house lawyers today and how their expectations of external lawyers are changing as a result. The panel of external counsel comprised moderator Ms. Joyce A. Tan (“TAN”), Managing Partner of Joyce A. Tan & Partners LLC (Singapore), along with her Meritas colleagues Mr. Philip Wong (“WONG”), Managing Partner of Gallant (Hong Kong); Mr. Yao Rao (“YAO”), Managing Partner of HHP Attorneys-at-law (Shanghai, China); Mr. Ajay Bhargava (“BHARGAVA”), Partner of Khaitan & Co (India); and Mr. Emerico De Guzman (“GUZMAN”), Managing Partner of ACCRALAW (Philippines). They were joined at the roundtable by 16 in-house counsel from six jurisdictions across Asia for a lively and frank conversation.

Key Takeaways

Premium on Experience, Specialized Expertise, & Practical Advice

According to Ms. Arlene Lapuz Ureta (“URETA”), Senior Legal Counsel of Nissan (Philippines), in-house counsel are likely to seek out external lawyers for practical and specific expertise and turn to those they trust and who understand their needs and challenges. URETA shared that she often uses external lawyers for compliance issues involving contractual obligations, as well as for litigation risk management, which require immediate advice on specific concerns. “That’s where outside counsel will matter and can be easily justified because they have the expertise,” she said.

Chiming in on this from the external counsel perspective, BHARGAVA said, “Clients come to us because they believe we have the right experience, knowledge bank, and availability to help them.” He added, “We handle a variety of matters, we have a lot of exposure, and we have the ability to gather all that knowledge better than our GC friends. We know our environment and the landscape, and our knowledge can add value. We can provide practical solutions.”

These days, those characteristics are particularly important in global matters. “External counsel bring in subject matter expertise in multiple jurisdictions,” commented Ms. Sudha Hooda (“HOODA”), Legal Director of Nvidia Graphics Pvt Ltd (India). “Where there is specific advice or assistance required across borders, external counsel are great resources.”

YAO pointed out that 2020 was a very unusual year in China, not just because of COVID but because of a major legal change, namely the implementation of the Civil Code, which is modernizing the legal system in China. There is also a new bankruptcy wave and many new compliance requirements such as data protection. He explained that the best way for a law firm to compete on the Chinese mainland is by offering straightforward, practical advice to ensure the client gets its desired result.

Need for Flexibility & Pragmatism

In-house counsel also increasingly seek flexibility and responsiveness, given the changing demands posed by the pandemic and other factors. “Each and every client these days will run to us at any hour of the day on matters involving breaches of contract due to quarantine extensions and the obligations when they can’t meet deadlines or face other risks because of COVID-19,” said GUZMAN. He noted that management at ACCRALAW (Philippines) tells its lawyers to be available and flexible so they can address a client’s needs quickly, especially during these times, and keep the all-important lines of communication open.

Mr. Deepak Acharya (“ACHARYA”), General Counsel of Wipro (India) said his three critical challenges during the pandemic have been, first, making sure

that the firm's personnel are safe and have all the support they need to deal with the COVID crisis; second, the difficulty of collaborating and serving internal client needs without meeting face to face and without the opportunity to read body language; and third, managing business risks during a time when it is difficult to gauge comfort levels due to remote communication. "It's been a challenge to fully understand the risks we take as an organization and how we assess those risks," ACHARYA said.

Mr Rajeev Chopra ("CHOPRA"), Managing Director of Accenture (India) pointed out that in-house lawyers increasingly find their roles encompassing far more than merely giving legal advice. This has been particularly true during the pandemic. To demonstrate the point, CHOPRA said his focus has been on managing crises with compassion and commitment. "I've been in forums with senior colleagues on the India Leadership Committee where the focus has been to develop human resilience—the ability to adapt and engage through difficult times and leading with more compassion and responsibility," he said. As a result, when he seeks out a law firm or another legal services provider, he looks for someone who can prioritize and offer practical, pragmatic advice.

The Value Equation & Trust

Mr. Michael Zhu ("ZHU"), General Counsel of Mercedes-Benz (Taiwan) said the need for an external lawyer depends on the specific concern or goals at hand. He noted that in this volatile time it can be particularly difficult to convince management, who are focused on business decisions and P&L, of the need for external legal advice. With so many competing projects, in-house counsel has to persuade the CEO of the need to hire external counsel. "We have to work with outside counsel to demonstrate value," ZHU said.

On the other hand, external counsel can help persuade management of the need for external legal services. It is often difficult to discuss risk with corporate management, since it is something that may or may not be realized in the future. "This mindset makes them reluctant to allocate resources to Legal," said Mr. Charlie Chiu ("CHIU"), Legal Counsel of Fresenius Medical Care (Taiwan). External counsel can educate them by sharing case studies and stressing government enforcement actions.

WONG added that external lawyers are dealing with the same concerns about value, but from a different perspective. "We understand the need to pay less for the same quality of service, but in reality, it is quite difficult," he said. Expectations for lower prices come with demands for very quick service, which means overtime. "The issue becomes whether or not the price is sufficient to retain the young and bright minds in the law firm and whether the workload for the lawyers is too heavy that the risk of negligence will increase. It boils down to risk management. We have to try hard to make sure in-house counsel and external counsel work as a team, to provide the best service while letting us retain our talent."

“There’s always that tension between keeping the work internally or throwing it out to external counsel,” agreed Ms. Fina Tantuico (“TANTUICO”), Legal Counsel of F&J Prince Holdings Corporation (Philippines). The existence of this tension resonated with Mr. Roberto Figueroa (“FIGUEROA”), Senior Vice-President and General Counsel of HSBC (Philippines), who emphasized the importance of building trust for the client’s assurance that its interests would be prioritized at all times, such as over opportunities for billing by external counsel. “If this trust exists, GCs will have confidence that the firm will always act in the best interest of the client,” said FIGUEROA.

TAN raised the controversial issue of whether it is time to reconsider billing by the hour, and questioned if this is the only business model that will work for a law firm. TAN noted that the difficulty lies in in-house counsel wanting to know upfront exactly what will be payable, while external counsel is not necessarily able to predict how much time or resources a project will consume.

Interestingly, Mr. Raymond Goh (“GOH”), Group General Counsel, International, of China Tourism Group Corporation Limited (Hong Kong) had a different perspective on the matter of costs versus value. “I would not encourage firms to submit unrealistic fee estimates during the bidding process, hoping to get selected and subsequently trying to secure additional fees as the matter progresses,” he said. “Sophisticated clients understand that you get what you pay for. I would encourage firms to build in a comfortable buffer in their fee estimates, because once the numbers are set, it can be extremely difficult to change them. We focus on firms that can deliver the desired results within the timeframe that we are operating under, and if they tend to charge more than other firms for this, that’s fine.” GOH urged law firms, “We are extremely performance and results-driven. Don’t worry too much about whether your fee estimate is higher or lower than the other firms, just give us your most competitive package and leave the internal deliberations to us.”

Noting the “interesting and refreshing discussion” generated at the roundtable, Dr. Ashok Sharma (“SHARMA”), Founder and CEO of FICL (India), observed that the tension between cost and value has been compounded by the pandemic. “There is more pressure on law firms and GCs to deliver at a lesser cost due to loss of business,” he said. SHARMA expressed that it has become a delicate balancing act.

Choosing External Legal Service Providers & Relationships

A poll taken during the event found that 42% of General Counsel in attendance have procured legal services from external providers other than law firms, often using more than one type of service provider. Out of the group who said they did, 60% engaged alternative legal service providers (“ALSPs”), followed by accounting firms (50%), then locum lawyers or freelancers (20%), with 30% saying they have used other types of service providers or solutions.

In some cases, the decision to opt for a service provider other than a law firm has had to do with the strength of relationships. As explained by Mr. Daniel Choo (“CHOO”), Associate General Counsel APAC of Bruker (Singapore), the law firm that has the pre-existing relationship with the client enjoys the upper hand. CHOO said that the law firm’s familiarity with and understanding of the client’s business also enables the law firm to provide meaningful solutions to the client, so that his company has not found the need to move away from law firms for legal services.

Mr. Rajendra Lade (“LADE”), General Manager (Legal) of Hindustan Petroleum Corporation Ltd. (India), echoed CHOO’s emphasis on the value of relationships. He explained that sometimes engaging single advocates in preference to law firms is partly due to the cost but also because of long-term individual relationships. LADE explained that many times a lawyer who had been working on the company’s matters for a long time, then becomes very familiar with its affairs while working with the external law firm retained by the company, but subsequently leaves that law firm to start out on his or her own. Such a lawyer’s understanding of and long-term familiarity with the company’s affairs would make it attractive for the company to continue working with him or her when he/she starts an individual practice. Hence, in such cases preference goes to the single advocate over the larger law firm.

Sometimes the choice of legal service provider is driven by the specialist advice or representation required by the client. Mr. Rajendra Misra (“RAJENDRA”), Executive Vice President & General Counsel of The Indian Hotels Company Limited (India), said he would be likely to go to a practitioner with an individual practice if that person has specialized

POLL #1

Does your company procure legal services from external providers other than law firms?



POLL #2

If your company procures legal services from external providers other than law firms, are these providers (multiple choice):



knowledge about a subject on which he wanted advice. Similarly, “there are ALS providers that have made a market for themselves on contract management or compliance management or tracking litigation across the country,” he said. “These are areas where I would be going to an ALS instead of a law firm for support.” He added that some practitioners beyond law firms have also demonstrated nimbleness and agility, another attractive quality.

CHOPRA mentioned that he looks to service providers such as accountants or ALSPs to supplement the work a law firm does. “They bring that finesse which oftentimes law firms tend to miss,” he said.

YAO shared that law firms in mainland China are facing more competition from ALSPs, as well as from artificial intelligence. Big Chinese companies, especially those with a large number of standardized contracts, such as in the insurance industry, are developing their own AI systems to review contracts, for example, and turn to law firms only for the really difficult, cross-border contract matters. “If we want to meet the needs of the clients, we have to leverage our experience and improve our legal knowledge in this fast-changing environment where we compete not only with other lawyers but with other legal services,” said YAO.

Technology Considerations

Another poll conducted during the roundtable asked in-house counsel attendees whether they require external legal service providers to use or adopt any specific technology in providing legal services to their companies. TAN observed anecdotally that some in-house counsel have

more requirements in this area, such as requiring law firms to adjust to the billing platforms or cybersecurity standards of their companies. The poll results showed, however, that this is not as important a factor as had been imagined, with 33% responding that they do prescribe technology requirements for law firms and 67% saying they do not.

For the most part, in-house counsel stressed that they look for law firms that can deliver results rather than those that offer the bells and whistles of technology. “I am not particular about whether firms utilize avant-garde technology or software,” said GOH. “To the extent that firms have it, that’s great. But we are laser-focused on the end result and client care, and less so on the packaging, marketing, or other nice-to-have items that do not have any material impact on the end result.”

POLL #3

In appointing legal service providers, does your company require them to use any specific technology (e.g. for cybersecurity, billing, matter management)?

YES 33%

NO 67%

Cybersecurity and data protection are the tech areas of most concern to the in-house counsel in attendance. ZHU explained that some major companies want to harmonize their standards in the qualification of vendors. They see external legal services as equal to any other procurement. His company's assessment criteria include a firm's capability to handle and protect data, and it gives them a checklist to state their data deletion policy, cybersecurity measures, firewalls to segregate sensitive information, and the like.

Cybersecurity issues have compounded over the course of the pandemic. ACHARYA noted that cybersecurity is a primary concern for his company, which operates in the IT industry. Preventing cyberbreaches has become more challenging with remote-working protocols, as data located on laptops at home is more difficult to protect.

Conclusion

TAN concluded the session with thanks to the panelists and attendees for their active participation, candid feedback, and noted that a good relationship between in-house counsel and external lawyers is critical to solving the many issues raised during the roundtable conversation. She recalled FIGUEROA's earlier statement: "Because of that relationship, trust is built."

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