Innovation in-house: a five year retrospective
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>05</td>
</tr>
<tr>
<td>Executive summary</td>
<td>08</td>
</tr>
<tr>
<td>1. Structure of the legal department</td>
<td>14</td>
</tr>
<tr>
<td>2. Managing external legal advisers</td>
<td>28</td>
</tr>
<tr>
<td>3. Process efficiency</td>
<td>36</td>
</tr>
<tr>
<td>4. Characteristics of the most impressive General Counsel</td>
<td>48</td>
</tr>
<tr>
<td>5. The move to complexity</td>
<td>52</td>
</tr>
</tbody>
</table>
Introduction

The focus of this report is to draw together the insights we have gleaned from interviewing some of the most innovative General Counsel in Europe for the FT Innovative Lawyers report.

Research methodology

The findings are based on primary interviews with General Counsel conducted for the FT Innovative Lawyers report, the European edition. Interviews tended to last for about an hour and followed a structured questionnaire. Most General Counsel ranked in the FT Innovative Lawyers report are drawn from global organisations and represented the overall heads of legal. The rankings in the FT report are compiled through a mixture of submissions from the in-house teams themselves and nominations from the market.
Sample group

Although the insights in this report have been drawn from the last five years of researching the FT’s in-house rankings, we mainly include as examples comments from the following list of General Counsel who are drawn from the last two years of the FT report.

<table>
<thead>
<tr>
<th>Company</th>
<th>Year interviewed</th>
<th>Interviewee</th>
<th>Size of legal department</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aegis Group</td>
<td>2011</td>
<td>Simon Zinger, Group General Counsel</td>
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</tr>
<tr>
<td>BAE Systems</td>
<td>2010</td>
<td>Philip Bramwell, General Counsel, Roger Wiltshire, Chief Counsel</td>
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</tr>
<tr>
<td>BANIF Investment Bank</td>
<td>2011</td>
<td>Tiago dos Santos Matias, Head of Legal</td>
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</tr>
<tr>
<td>Barclays Legal Team</td>
<td>2010</td>
<td>Judith Shepherd, GC Global Retail and Commercial Bank, Mark Harding, Group GC</td>
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<td>BMPS</td>
<td>2010</td>
<td>Raffaele Rizzi, General Counsel</td>
<td>125</td>
</tr>
<tr>
<td>British Airways</td>
<td>2010</td>
<td>Maria da Cunha, General Counsel</td>
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</tr>
<tr>
<td>Carillion plc</td>
<td>2010</td>
<td>Richard Tapp, General Counsel</td>
<td>25</td>
</tr>
<tr>
<td>COFRA Holding AG</td>
<td>2010</td>
<td>Andrew Vellani, Chief Legal Officer, Director and Management Board Member</td>
<td>47</td>
</tr>
<tr>
<td>Deutsche Bank</td>
<td>2011</td>
<td>Chronis Anoustis, Leveraged Debt Capital Markets team</td>
<td>6</td>
</tr>
<tr>
<td>E.ON UK PLC</td>
<td>2011</td>
<td>James Jones, Legal Counsel</td>
<td>21</td>
</tr>
<tr>
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<td>2010</td>
<td>Fiona Stark, General Counsel</td>
<td>17</td>
</tr>
<tr>
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<td>Fabrizio Minneci, Chief Legal Officer</td>
<td>40</td>
</tr>
<tr>
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<td>Hooman Yazhari, General Counsel</td>
<td>14</td>
</tr>
<tr>
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<td>Mark Horncastle, Mergers and Acquisitions team</td>
<td>7</td>
</tr>
<tr>
<td>GE Oil &amp; Gas</td>
<td>2011</td>
<td>Michael McIlwrath, Associate General Counsel – Litigation</td>
<td>4</td>
</tr>
<tr>
<td>Guardian News &amp; Media Group</td>
<td>2011</td>
<td>Sarah Davis, Group Commercial Legal Director</td>
<td>6</td>
</tr>
<tr>
<td>Helaba</td>
<td>2011</td>
<td>Uwe Scherz, Senior Vice President, Legal Services</td>
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</tr>
<tr>
<td>Henderson Group</td>
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<td>Jacqui Irvine, General Counsel</td>
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</tr>
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<td>HSBC Holdings Legal Team</td>
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<td>Richard Bennett, Group General Counsel, Legal &amp; Compliance</td>
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</tr>
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<td>InBev UK Limited</td>
<td>2011</td>
<td>Anna Tolley, UKI Senior Legal Counsel</td>
<td>3</td>
</tr>
<tr>
<td>ITV</td>
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<td>Barry Matthews, Deputy General Counsel</td>
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</tr>
<tr>
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<td>Chris Davies, General Counsel</td>
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<td>4</td>
</tr>
<tr>
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<td>Lesley Wan, Head of Legal for Property</td>
<td>75</td>
</tr>
<tr>
<td>Man Group</td>
<td>2011</td>
<td>Alexander Schofield, COO, Product Dev. Legal &amp; Regulatory</td>
<td>60</td>
</tr>
<tr>
<td>Nationwide Building Society</td>
<td>2011</td>
<td>Liz Kelly, General Counsel</td>
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</tr>
<tr>
<td>Company</td>
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<td>Interviewee</td>
<td>Size of legal department</td>
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<tr>
<td>Network Rail Infrastructure</td>
<td>2010</td>
<td>Hazel Walker, Group Company Secretary Sue Manick, Head of Legal Services</td>
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</tr>
<tr>
<td>Nokia</td>
<td>2011</td>
<td>Louise Pentland, Chief Legal Officer and Executive VP</td>
<td>160</td>
</tr>
<tr>
<td>Novo Nordisk</td>
<td>2010</td>
<td>Ole Ramsby, Company Secretary and Global General Counsel</td>
<td>66</td>
</tr>
<tr>
<td>Parker Hannifin</td>
<td>2011</td>
<td>Martin Rouwenhorst, Legal Counsel, Europe</td>
<td>25</td>
</tr>
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<td>Premier Foods</td>
<td>2010</td>
<td>Suzanne Wise, General Counsel</td>
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</tr>
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<td>RBS</td>
<td>2011</td>
<td>John Collins, Director of RBS Legal &amp; Deputy Group</td>
<td>550</td>
</tr>
<tr>
<td>Save the Children International</td>
<td>2011</td>
<td>Elizabeth Stephen, General Counsel</td>
<td>4</td>
</tr>
<tr>
<td>Schroders</td>
<td>2011</td>
<td>Howard Trust, General Counsel</td>
<td>40</td>
</tr>
<tr>
<td>Siemens</td>
<td>2010</td>
<td>Peter Solmsen, General Counsel</td>
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</tr>
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<td>Standard Chartered</td>
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<td>James Ellington, Group Head of Legal Susan Adams, Head of Legal and Risk Management</td>
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</tr>
<tr>
<td>Syngenta</td>
<td>2011</td>
<td>Dr. Tobias Meili, Head of Corporate Legal Affairs</td>
<td>250</td>
</tr>
<tr>
<td>Three</td>
<td>2011</td>
<td>Stephen Lerner, General Counsel and Director of Regulatory</td>
<td>17</td>
</tr>
<tr>
<td>TI Automotive</td>
<td>2010</td>
<td>Tim Guerriero, General Counsel</td>
<td>4</td>
</tr>
<tr>
<td>Unilever</td>
<td>2010</td>
<td>Anny Tubbs, European Competition Counsel</td>
<td>170</td>
</tr>
<tr>
<td>Yahoo!</td>
<td>2011</td>
<td>Pierre Landy, Regional General Counsel, EMEA</td>
<td>35</td>
</tr>
</tbody>
</table>

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**RSG Consulting**

RSG Consulting is a legal strategy consultancy founded in 2001. The company is a leading commentator and analyst on trends in the global legal market. CEO Reena SenGupta has a track record of devising ground-breaking research methodologies for publications such as the Chambers & Partners Guides and the FT Innovative Lawyers report and awards. RSG Consulting conducts extensive research and analysis programmes for leading international law firms and legal departments, and consults on communications and business development. A recent focus has been reports on the Indian legal market.
Executive summary

Structure of the legal department

The innovative law department: Over the past five years, we have seen the barriers between the legal department and the business come down. The idea that an in-house legal team should function like an internal law firm (Philips, GE) has given way to a vision of the legal department as a commercial function that can and does drive economic value for the business.

Rigid, siloed structures have given way to much more fluid structures. In-house lawyers are business partners, embedded and able to work across units and specialisations.

Features of an innovative legal function:

- Global legal departments reflect their organisations so are clearly different in structure. Different company cultures drive different working practices. However, over the past five years there are some observable trends in the development of legal functions. These are:
  - A shift in the perception of the legal function from a cost centre to a profit driver (Dyson)
  - Growth of competency centres for particular legal specialisms (Nestlé)
  - Use of captives in low cost jurisdictions (Colt, BT)
  - Defederalisation of the central legal department into the business
  - Appointment of a Chief Operating Officer, often a non-lawyer, who can manage the function (Novo Nordisk)
  - Greater, smarter use of technology (HSBC)
  - Greater collaboration with other functions, with some legal departments merging with other functions (Nokia)
  - Restructuring the legal department to reflect the clients of the company, rather than the company structure itself (ENI)
  - Provision of training contracts
  - Provision of dual career paths
  - Responsibility for social responsibility and ethics of the business (Reuters)
  - Legal function consciously develops its own brand to the business
  - Use of management consultants to assess value and review processes (Eni, Belgian Poste)

As company officers, leaders, managers and advisers:

General Counsel are becoming more high-profile in the business. With a changing commercial environment, GCs find themselves leading on corporate governance, ethics and overall risk management. They report directly into the CEO and have more of an outward-facing role. Functionalities have increased in number and being a team leader and expert manager has become equally as important as being the top legal adviser. The emphasis on top management and leadership skills for General Counsel has deepened over the past five years.
Managing external legal advisers

Variety is a key theme in smart resourcing in terms of instructing outside lawyers and other suppliers, and managing legal fees. The segmentation of legal work is an inexorable trend, with most GCs having done some work to unbundle legal services. There is a significant increase in the confidence of GCs to move away from the hourly rate and use alternative suppliers such as LPOs and virtual law firms. However, a significant minority, (8/20) in-house legal teams in the 2011 FT report told us they thought they could manage their external legal advisers better.

Value purchasing is a term we have coined to describe the way in which innovative General Counsel purchase legal services. It draws together the latest thinking, shifts in attitudes, technologies and the entrance of new suppliers. Innovative GCs use formal purchasing processes, agreements and evaluation metrics. They are likely to have closer and more collaborative relationships with a smaller number of key suppliers.

The key trends:

– Collaboration: Despite being the driver in the buyer-supplier relationship, most innovative General Counsel are looking to develop new forms of collaboration with their long-term legal advisers and new suppliers. In addition, many are working their panels differently and encouraging members to co-operate and share knowledge, precedents and training. In effect, the aim is to get fully rounded and integrated support from the panel, and to make panel members work together in a coherent way in the interests of the company.

– Partnering: A converse trend, but no less innovative, is a move back to a single supplier for some General Counsel. Companies such as Tyco, Colt and Carlsberg are looking at single law firms to help them across jurisdictions and practice areas, tied to annual fixed term agreements.

– Service level agreements: Innovative General Counsel have instituted formal service level agreements and parameters to performance whilst also maintaining personal relationships. Most private practice law firms are willing to help the GCs improve the relationship to introduce certainty and better project management.

– Getting more value out of private practice law firms: the bar to client service deliverables and added value has risen exponentially in the legal profession, particularly in the UK, although innovative law firms in continental Europe are emulating many of the top UK law firms in their approach to clients. Firms offer complimentary training programmes which are slick, smart and experiential to big in-house legal teams. Some firms offer technological support; they second project managers and in some cases act as management consultants to the internal legal function. Some of the more innovative GCs have seen the potential to work with these willing law firms and mould their offerings to help them really deliver cost-effective value to the business.

– Third party providers: The clear and big shift in the way in which innovative General Counsel purchase external legal support is exemplified by their willingness and enthusiasm for alternative providers such as legal process outsourcers like Integreon and virtual law firms such as Axiom. These suppliers are increasing their market share with the in-house market.
Process efficiency

While GCs and senior in-house lawyers are moving up the value curve to play important roles as strategic partners to the business (effectively upskilling), process efficiencies at the broader department level are allowing legal teams to:

1. Demonstrate value and cost savings they can deliver to the business
2. Generate economic value and competitive advantage for their businesses
3. Manage larger, more diverse and more geographically spread legal teams
4. Continue to deliver value while allowing for more flexible working practices

Another important change has come as companies become more comfortable using external suppliers to efficiently resource work, which includes a variety of third-party and captive outsourcing and offshoring arrangements.

Other teams are looking at process improvement and quality management to improve performance, efficiency and to manage litigation costs. E-discovery solutions are now widespread for companies with US operations, and becoming so for those in contentious industries in Europe.

The solutions employed by in-house teams to deliver efficiency gains can be grouped into the following categories, which are detailed later in the report:
- Greater use of technology
- Project and process management frameworks
- Document standardisation and simplification
- Document automation
- Improved know-how, information updating and sharing
- Integrated technologies
Characteristics of the most impressive General Counsel

Having had the fortune to interview some of the smartest, most experimental General Counsel over the past five years, we notice that the most impressive of them display the following traits in abundance:

1. Leadership and management
2. Business acumen
3. Ownership; and having an international mindset
4. Communication abilities

Complexity

All of the innovative General Counsel we have interviewed mentioned that the environments in which they operate have become incredibly complex, which was not only driving the evolution of their own roles but was also posing some significant challenges. Greater complexity is driving many General Counsel to innovate. Later in this report, we outline some of these challenges in depth but they can loosely be divided into three categories – the organisational, individual and professional.

Organisational: ‘Doing more with less’ and managing rapid change is a major theme within the in-house community. One of the key issues for General Counsel in international organisations is how to ensure global compliance.

Individual: Many General Counsel are aware that their own professional personas have to change and that there is currently a lack of clarity and training around what they need to be and how they should develop themselves to get there. For example, the need to have finance ability was considered key but lacking in many General Counsel.

Professional: There is dissension in the GC community as to the ‘proper’ role an in-house lawyer should have within the business, and whether being a strategist and being too involved compromises professional integrity. However, all of the innovative General Counsel in the FT reports see themselves as strategic business people.
Structure of the legal department

Introduction

The role of the in-house legal function has been transformed in the last five years. Many of the changes have been headline-grabbing, such as the drive towards cost-cutting, efficiency and value resourcing in the wake of the economic downturn. But the most significant change has been more subtle. It relates to the actual role the in-house legal department now plays in business.

Back in 2007, when we began our research into innovative General Counsel for the Financial Times, there had been a school of thought, led by GE’s former General Counsel, Ben Heineman, that the in-house function of the future would be effectively an internal law firm. At that time, this thinking was shared by several top GCs who felt that creating an internal law firm within the business would best serve its needs. In addition, not every GC felt it was their prerogative to drive economic value for the business.

By 2012, these views appear outmoded.

The most innovative legal functions are now developing in ways which go far beyond replicating the functionality of an in-house law firm. These in-house teams have moved away from thinking of themselves as an independent ‘silo’, and treating the broader business as their ‘client’.
Innovative law departments make a virtue of laterality, networks, fluidity, and the embedding of legal functions into as many aspects of the business as possible. This is a complete reversal of the concept of in-house as a distinct, hierarchical, and at times isolated, subdivision.

Also characteristic of the new approach is the use of a Chief Operating Officer role in tandem with the traditional GC (who may well now be a Chief Legal Officer), dual career paths for in-house lawyers, and much more sophisticated internal management and tracking systems to control and coordinate outputs and costs.

The benefits are manifold, from freeing up the GC to take a more strategic role, to better controlling risk by embedding legal personnel at multiple layers within the business as a whole.

This shift also marks a transition from in-house legal being a passive supplier to the business, to becoming an active multilateral function, able to drive much more significant value creation. Embedded lawyers across different regions, business units, and project groups are better able to deliver advice, can train non-lawyers to reduce risk and costs, and enable the executive legal leadership to maintain better communications with all the divisions of a company.

Giving GCs an increasingly high-status role within leading companies, the new model department is becoming a necessity in an environment of heavy regulation and increased risk awareness.

By splitting the GC role into its managerial and strategic risk control elements, the full potential of the in-house function can be realised, leaving the CLO to concentrate on advising the board in a way that many private practice lawyers would find impossible.

In a sense, today’s in-house legal function has emerged from its silo, blinking into the light of day to take on an increasingly significant role, in the boardroom and throughout the business.
Managing growth and integrating diverse legal teams

Just over half of the General Counsel interviewed in 2011 said they expected the size of their legal teams to grow by headcount over the next 3-5 years and managing this growth would be a priority. In-house teams are growing as they bring more work in-house in an effort to reduce spend on law firms, and as their businesses grow and expand into new markets.

A large proportion of the GCs interviewed also said their companies were now consolidating, often following mergers or acquisitions in new jurisdictions. The priority for these General Counsel is to integrate legal teams spread across diverse regions and business lines. They need to put in place processes and systems for knowledge transfer across the legal function and between legal teams and the business.

The expansion of firms on a global scale and subsequent fragmentation of legal departments has created challenges. Each new jurisdiction creates distinct issues for legal teams, and demands a necessary understanding of the requirements of each microclimate. Operating in and recruiting from diverse business cultures creates a risk of dilution of expectations, practices and policy, particularly if the absorption of existing local operations comprises part of the company’s expansion model.

Legal teams will need to ensure that initiatives, processes and protocols are executed universally in these wide ranging environments. The fourteen way merger overseen by Elizabeth Stephen, GC at Save the Children International, has unearthed exactly these issues.

Legal departments are also continuing their drive to become more integrated with their companies’ business activities. Tiago dos Santos Matias, head of the in-house counsel team at BANIF Investment Bank, has instituted a programme whereby each lawyer in his department must come up with two new financial products a month, or refine existing ones to make them more income efficient.

Structurally, legal departments are balancing the need to be integrated across the global legal function with keeping teams closely aligned with business lines and regions. Howard Trust at Schroders points to two distinct options for in-house departments:

“One model is to have a law firm within a corporate: the alternative model is to have lawyers integrated into the business….We’re fully integrated and not aloof from the business… Our lawyers attend senior management meetings and are very tied into the business. An integrated legal team, integrated into the business.”

For legal teams like E.ON, the legal team needs to be able to flexibly reallocate resources. The company is moving into South America and Asia, but Legal Counsel James Jones says the legal department will expand only in the future.

“In the meantime we will run it as we did before when we expanded into new geographical areas. We do this by flying people over for a bit to set up the new businesses.”
Integrating into the business: examples

Although in-house teams are more embedded, getting close to the business still remains a pressing concern for many. Virtually every in-house lawyer interviewed spoke of the need to be proactive and give commercial as well as legal advice, in order to differentiate themselves and prove to the business that they are adding value.

The credit crisis and ensuing emphasis on compliance has put in-house legal teams centre stage in many organisations. The last three years have seen legal teams re-engineer their roles in supporting the business in times of crisis and this has put pressure on others who are less forward-thinking to do the same.

In-house lawyers now have to actively contribute to the bottom line and be seen as an engine or at the very least a facilitator of economic value.

In-house lawyers are increasingly moving into business roles. For example, Nokia sees the shift of its lawyers into the business as a great achievement.

Within legal teams there can be dysfunction, with some lawyers being closer to the business than others.

In Helaba there are six lawyers who perform specialist finance work. Uwe Scherz says:

“It is important to distinguish my team and the rest of the legal department — my team is very close to the transactions — we are with the commercial guys from the beginning — we are client facing, we structure the financings — the rest of legal is a bit far away from the transactions.”

So divisions even within the legal department are apparent, with the transactional lawyers viewing others in the legal department as not being close to the business, and therefore not adding value.

Man Group says they are “very well integrated into the business — we tend to be very close to senior management — our CEO is an ex-lawyer and understands our value.”

Not all in-house teams have the luxury of a CEO who is well versed and sympathetic to the issues facing them and who sees the legal team as integral to the success of the business.

Other organisations, like Three, have increased their legal teams rapidly, from 11 to 80 in five years and structured themselves into broader departments which typically cover legal, commercial and regulatory affairs.

These lawyers are deal creators and have end-to-end commercial accountability, potentially due to the fact that in the business of communications and the internet, the legal implications are so fast moving that to do a deal without a lawyer’s input from the beginning is unhelpful.

Deutsche Bank talk of being client facing but also of the impact that legal can have in the greater business:

“Part of it is dealing with the crisis but also about learning lessons too, and keeping up to date with new products. There is a degree of amnesia in the financial markets — one role the legal team can play — a lot of people forget what happens and legal should remember and remind others in the business and use it to counsel and advise people.”

Nokia, too, sees it as crucial that the focus of the in-house team is on the business. General Counsel Louise Pentland says:

“If it is just an overlay of the business then that is a lost opportunity.”

Syngenta also recently regrouped its legal team so that all teams became part of an integrated legal team, which they say has helped them connect to the business.
Managing the legal function

One of the key developments in the in-house market over the past five years is that General Counsel fulfil both managerial and advisory roles. The complexity of dividing attention between the two roles is intensified because each requires different skill sets and experience – from managing budgets and people to being a legal counsellor and strategist.

Being a great manager

Over the past two years of research for the Innovative Lawyers report, we have noted a developing trend in General Counsel thinking around where they deliver the most value to the business. Increasingly General Counsel see their value as managing and releasing the value of their team members.

One General Counsel said:

“If you have a team of say 50 to 100 lawyers, I think it is more important what your team brings to the table than you alone. Of course, for your management team your personal contribution is of much more importance.”

The management ability of top General Counsel is being challenged, particularly in the new risk environment, where the burden of regulations has increased exponentially. As one innovative GC said recently, “the regulator has gone mad.” Many feel that this is the area in which the potential for litigation is the greatest so consequently it is the area in which they are focusing most of their management activity.

It has become common, particularly in the US, for General Counsel to have additional non-legal job titles such as ‘Executive Vice President’, ‘Vice President’, ‘Chief Administrative Officer’ or ‘Commercial Director’. What’s in the name is recognition of the significant management role the GC fulfils, outside the scope of the traditionally legal General Counsel function.

Innovative GCs seamlessly do the following as team leaders:

- Optimise the value to the business of the legal function
- Engage and motivate staff
- Manage career development of team and grow junior people
- Act as ambassador and advocate for the legal team
- Ensure legal team is integrated into business
- Delegate genuine responsibility and resist micro-managing
- Trust team to make decisions and escalate issues where appropriate
- Resist isolation in the executive suite
- Ensure the team has the right resources and know who the experts are
- Plan for succession
Supporting roles

One way to deal with the increased management burden is to create a non-legal management position reporting to the General Counsel. A number of General Counsel in large organisations have appointed chief operating officers, deputies or operational heads to manage the day-to-day matters of running a legal department.

Some examples of in-house teams that have enlisted dedicated managers:

**Barclays**

Each business unit has an embedded legal team managed by a General Counsel. Group General Counsel, Mark Harding, has moved up the value curve and closer to the centre of the business. His role is a senior management position and he sits on the executive management committee. In turn, Barclays’ legal department has a Chief Operating Officer, who manages the day-to-day running of the function.

**Deutsche Bank**

“My role as COO in the legal department at Deutsche Bank is similar to the role of an executive director in a law firm. I’m involved in budgeting, hiring, cost management, technology planning, and department strategy. I support the General Counsel, and the department supports the business and senior executive committee of the Bank. The lawyers do the legal thinking, and my team gives them the tools to do what they do best. If you think about the amount of legal and regulatory change going on globally, it’s impossible for one General Counsel to know it all; he relies on his regional General Counsels and the senior partners at our preferred law firms. So having a structured legal department to support him is critical.” – Rose Battaglia, Deutsche Bank

**Rio Tinto**

Leah Cooper, the department’s managing attorney in 2009, was tasked with making efficiencies in the legal function. She concluded a high-profile deal with CPA Global which projected to save the company 20% of its annual legal budget. She got so involved in the project that she actually ended up leaving Rio Tinto to become the Head of Strategy at CPA Global, where she occupied a pure management role.
## Characteristics of innovative legal functions

### Shape and operational features

- Bigger in headcount: in-house function will grow in size with less work going to external law firms. Greater business focus on maximising value of in-house lawyers.
- Competitive within the business: an equal to other corporate services departments and able to demonstrate value and justify budgets. Status parity with departments like finance, HR and marketing.
- Efficient and effective: the ‘new law department’ will have reinvented itself around efficient processes to unbundle and strategically resource legal work, using technology and outsourcing.
- Increased accountability: sophisticated measurement tools to evaluate legal department’s value to the business. Will include more business relevant appraisals for individual lawyers.
- Cross-jurisdictional and cross-functional: the legal department will be able to deploy functional and regional expertise spread across a global business. Legal structure is fluid and flexible allowing lawyers to be redeployed to different areas of the business and different legal practice areas.
- Open source approach to knowledge sharing: tools and culture to allow for effective knowledge sharing between functions, regions and pools of expertise.

### Functions

- More than just legal: the department will have responsibility for and input into more functions, including social responsibility, corporate governance, ethics, risk management, compliance and communications.
- A strategic function: consistently involved at the front-end of decision making rather than the back. Broad and long-term view of business equips lawyers to be valuable strategic advisers. Lawyers don’t only impart legal advice, but advise solutions and alternatives and take on some risk. Lawyers understand the market and competitive environment.
- Specialist areas related to core business kept in-house: specialist legal units will handle areas such as IP, regulatory work, and small scale M&A.
- Client-facing: in-house lawyers will have direct interaction with business clients, providing advice and being involved in negotiations.
- Creating and driving economic value for the business: lawyers create and develop business opportunities as well as drive efficiencies and savings.

### Profile and skill sets

- Diversity: in-house team will be more diverse in terms of background, education, training and professional experience, and there will be a greater diversity of roles. Varied skill sets and experience will bring value to legal roles more closely integrated with specific business functions.
- Non-lawyers: will bring different expertise and skills to valuable roles like legal COOs, HR or IT managers. However, GCs retain management responsibility.
- Upskilling: less routine and more complex work kept in-house means individual lawyers will upskill. More varied and interesting work means in-house will continue to attract higher quality lawyers.
- Split career path: career paths for technical legal specialists and aspiring GCs diverge early on. Structured career development and training in place to support both.
**How does legal fit within the business?**

One General Counsel referred to the legal function as the “connective tissue” that underpins the organisation. Legal interacts with every part of the business: from the core management, corporate functions like HR or finance, and front-line business units.

The legal department can be organised into the following groupings:

An example of a **new management model** is the matrix structure employed by Novartis submitted to the FT report when the company’s legal team was restructured in 2008. Matrices like the one below allow lawyers to be both practice area specialists and to work within specific business lines.

Knowledge is shared along different axes allowing a better flow of information across the business. However, this kind of structure must be kept fluid and managed against the development of a new series of interlinked silos. A matrix can also provide a map for more efficient reassignment of skills as the market and business needs change.
Risk management: the evolution

As companies enter emerging markets, General Counsel have to make more complex risk assessments. Ensuring companies don’t fall foul of the new UK Bribery Act or the US FCPA, and risk reputational damage along the way is a major concern for businesses active in developing countries. General Counsel need more and better information on the comparative risks of doing business across the globe. At the moment, practical and current information is limited and a number of large law firms are attempting to facilitate information sharing amongst clients to help bridge the knowledge gap.

The work needed to comply with new financial regulation across the globe is also expected to increase over the next five years. Large banks can turn to major law firms for additional support in this area, but in-house legal teams will pick up additional workload and responsibility for ensuring compliance, including implementing new processes and rolling out training across their companies.

<table>
<thead>
<tr>
<th>Traditional risk manager</th>
<th>Innovative GC risk manager</th>
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<tbody>
<tr>
<td>- Defensive – prescribing the cure</td>
<td>- Proactive and preventative</td>
</tr>
<tr>
<td>- Rules based compliance</td>
<td>- Principles-based compliance</td>
</tr>
<tr>
<td>- Ticking boxes</td>
<td>- Exercising judgement</td>
</tr>
<tr>
<td>- Legal, contractual, silo risk management</td>
<td>- Systemic and strategic risk management</td>
</tr>
<tr>
<td>- Protects management</td>
<td>- Protects management, board, shareholders and company reputation</td>
</tr>
</tbody>
</table>
In managing risk and compliance, General Counsel most commonly point to online training tools which allow them to roll out and monitor compliance programmes across global companies. These are not only cost-effective methods, but also provide important evidence of ‘adequate procedures’ in place, should a breach take place. These tools provide important reporting to ensure all relevant staff have completed training modules or have passed tests. More general solutions are aimed at educating the wider business through web portals or road maps developed by the legal team.

Ole Ramsby at Novo Nordisk says: “It is already a task to train our lawyers, but we also give them tools so they can do further training of sales reps, management groups etc. We have 5,000 new employees every year, so it’s a big training footprint. We have e-learning programmes for this and are now taking this to the next level on how we document how we train people globally.”

Some of the solutions used include:
Training programmes mentioned by GCs include subjects such as antitrust, bribery & corruption and commercial contracts. Others saw providing training as an opportunity to deliver more value to the business. Hooman Yazhari, GC of Gategroup says: “We see ourselves as creating real economic value, sometimes via lawsuits to right wrongs, but most of the time by creating efficient and more profitable ways of doing business, in addition to good risk management. Training is very important. The legal team needs training to understand how the business works and what the key value drivers are. The lawyers can also lead training for the commercial teams on how best to make use of the legal function and what the economic value of certain ‘legal’ terms can be to the business.”

As companies globalise and centralise local legal functions and information systems, the need for better data security rises up the agenda. It is also important in allowing in-house lawyers more flexibility to work remotely and to move between different locations.

One GC said that they were investing in new technology for better information management to meet the new FSA guidelines around data security. Communication and knowledge sharing platforms will also be used to more effectively communicate risk issues, updates and changes across the business.

Risk and compliance tools cover a broad spectrum. They include more sophisticated and accessible IPR, contract and document management systems for better oversight and greater consistency.

At the more sophisticated end is an online litigation tool used by InBev. It requires everyone across the Western European region to input litigation risks, where the company would be the defendant, which is then used to inform both legal and accountancy risk assessments.
Shifts in the development of the in-house role

**From technical to strategic**
General Counsels’ focus has moved from narrow, transactional and legal objectives to business-wide and cross-functional ones. One GC said to us, “In-house lawyers need to get out, really understand the business, meet the people, really read into their subject and sectors, broaden their horizons and stop thinking of themselves as lawyers”.

**From perimeter to the core business decisions**
To have a genuine strategic input the GC must be one of the CEO’s closest advisers with a direct reporting line to the CEO and direct access to the Board. Additionally, the GC will be part of the business leadership with a seat on the executive management committee, remuneration and audit committees. Being closer to the centre allows the GC to view and manage overarching governance and compliance frameworks. It will be the responsibility of the GC to drive forward management expectations of the legal function and the General Counsel role.

**From an internal facing role to an outwards facing role**
One part of the GC role which interviewees envision growing is involvement in corporate communications. The GC provides strategic advice as a business leader and an independent assessment as guardian of the company’s integrity and reputation. At the same time embedded legal teams begin to have more direct interaction with clients, GCs are increasingly involved in anything public facing, whether it be investor relations or dealing with the media.

**From fewer functions to more functions**
GCs roles are moving to greater diversity. Expected competencies will not remain static, and GCs must be capable of adapting to and managing change. In the face of increasing complexity, GCs will have to be flexible in attitude and willing to develop broader skill sets. Multiple responsibilities – to the CEO, the Board, shareholders and the wider community – draw on different capabilities. Above all, it will require GCs to be excellent team leaders and company managers.

**Ethics and business integrity**
One of the functions to increasingly become the General Counsel remit is responsibility for business integrity and ethics. The GC’s training and position within the business, with broad oversight and direct reporting relationships to the CEO and in cases, the Board, means the function is a natural adjunct to the General Counsel role. It provides a real opportunity for General Counsel who take ownership and drive this key business issue both to be effective agents for ethical business and to stake a claim for the special strategic importance of the GC role.
Managing external legal advisers

Over the past five years, the approach General Counsel take to purchasing legal services has become bolder and more confident. In effect, innovative General Counsel have moved to a ‘value purchasing’ approach, where the main goal is to achieve value from the relationship regardless of the level of legal supplier. The more advanced purchasers have taken their procurement of legal services to new levels of sophistication. They have become smart disaggregators or unbundlers of legal services.

Value purchasing: what does it mean?

In summary, a value purchaser buys in the following ways:

<table>
<thead>
<tr>
<th>Buying ethos</th>
<th>- Bottom line focus goes hand in hand with a value approach</th>
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| Buying approach | - Advanced unbundling of legal services and segmentation of legal work into its component parts  
- Formal purchasing processes and arrangements  
- Tighter, better defined service level agreements  
- Greater use of ‘menus’ to define skills levels, training and fee arrangements  
- Common procurement platforms |
| Evaluation | - More sophisticated metrics used to evaluate legal service delivery and value from external providers |
| Suppliers | - Value resourcing – appropriate choice of supplier to type of legal work, both in terms of supplier type and supplier location  
- Fewer external law firms overall, and more leveraging for volume  
- Closer, more effective long-term relationships with primary advisers  
- Different legal suppliers such as LPO providers, virtual law firms and legal publishers are on the panel |
| Collaboration | - Panel firms have to work together and collaborate. This may mean working through the same portal and/or uniform platforms  
- Pooling of proprietary legal knowledge  
- Innovative single collaborations between a particular firm and the client, which turns the usual client-lawyer arrangement on its head  
- Site sharing: working in law firm offices and vice versa |
| Technology | - More adoption of advanced technologies such as thinking software  
- Extensive use of wikis and other knowledge sharing and transfer technologies  
- Social networking technologies used to communicate and share know-how  
- Innovative legal departments are highly mechanised |
| Fee arrangements | - Specified and varied billing arrangements with emphasis on value-based billing  
- Fixed fee arrangements become the majority mode of billing  
- Transparency of bills  
- Accurate forecasting, and predictable billing a must |
The drivers of the change in buying patterns are:

- The global recession
- The impact of globalisation and the entry of new legal service suppliers
- Changes to the GC role
- Changing expectations of the legal department from the business
- Pressure on costs and more scrutiny of legal spend

Most General Counsel in the FT reports feel that the shift in buying power to the client would be a long-term, fundamental change in the market. The downturn has accelerated this shift but few GCs feel that the balance will alter back in favour of the firms.

**A continual issue**

Managing external advisers is a continual issue for in-house teams and it is interesting to note how many feel that they can do this better (8/20 of the teams ranked in the 2011 FT report).

There is a desire to integrate outside lawyers into the business more deeply. There is also a sense that in-house teams need to exploit the resources of external counsel more effectively, in terms of both price and advice. Guardian News Group for example talk about their “reliance on external lawyers for trend spotting, precedents and templates”. Aegis Group talk about needing a “global review of all their external law firms, in order to assess the quality and pricing structure that they have in place”.

At Deutsche Bank, the legal team have invested in developing institutional relationships with their law firms and see it as their responsibility to ensure that the bankers receive the best possible service from the outside lawyers. This is mainly achieved through more proactive communication, but tools or processes which monitor service levels are also important. The bank says it is working with fewer firms, so the challenge is to ensure that enough competition remains to drive up quality. It is working on developing a managed tendering process for external legal services.
**Approach to legal costs and fee arrangements**

- Bottom line focus
- More sophisticated analysis of fees, collection of data and measurement
- Law firm discounts will not be taken at face value; more intelligent scrutiny of fees
- General Counsel accountability makes them stricter on fees
- Demand for variation: costs are dependent on response times, work types, regions, work complexity, value to company (Smorgasbord)
- Systems to measure non-monetary value received from law firms

The majority of GCs say that the pressure on fees will not result in simple requests to reduce fee levels. Many make the point that the scrutiny of their legal budgets and their general accountability meant that ‘cost-awareness’ is more reflective of a cultural mindset change. As one GC pointed out, the mechanisms by which they monitor and measure outside counsel fees has grown much more sophisticated over the past two years.

*“The focus has shifted from the hourly rates and measuring inefficiency to also being involved in project management, in establishing the key deliverables on the project timeline and agreeing to certain budgets.”*

**Varied approach to billing**

Most General Counsel acknowledge that billing for advisory legal work was undergoing a fundamental shift but that litigation may still be billed using the hourly rate for some years to come.

General Counsel working in other service industries tended to be more innovative in their approach to billing. One GC cannot see why the law could not follow the example of the software services industry.

*“They charge you whether you want 24/7, or 9 to 5, or just 45 minutes or 3 hours etc. Therefore why can’t a law firm say if you want face to face, that’s the most expensive. But the least expensive may be an internet tool where you could answer 5 questions and get your contract done.”*
Partnering arrangements

Key features

- General Counsel are in the driving seat in the relationship with private practice lawyers
- Law firms need to adapt to the changed reality for many GCs
- Law firms have to act as partners within parameters set by the GC. The GC will set standards, objectives and measure performance
- Partnering for many GCs means sharing risk via billing arrangements
- Partnering is seen as being effective at the junior level. Private practice associates and their counterparts in-house attend joint training programmes to foster understanding and closer working practices
- Panel firms collaborate to deliver value
- Collaborations will be tripartite and include in-house counsel, the law firm and an LPO provider or other supplier of commoditised/standardised legal work

We are seeing most innovation around the following three types of partnering arrangements:

1. **Single law firm provider:**
   Several innovative GCs have looked at working with a single law firm across jurisdictions and practice areas. Arrangements such as the one between Tyco and Eversheds have encouraged other General Counsel to follow suit.

2. **Training for juniors:**
   Other General Counsel have started partnering arrangements that centre around training, whereby junior associates and younger in-house lawyers come together to share knowledge and training. Many have taken advantage of programmes offered to them by their private practice law firms.

3. **Collaboration on panels:**
   Another concept of partnering is around the way in which General Counsel are making their law firms work together on panels. As these panels consist of more than traditional law firms, this collaboration will necessarily involve different types of legal service providers. Value will be seen through firms co-operating with each other, sharing joint platforms, working through common portals and in effect sharing knowledge, know-how and technology.
Many innovative General Counsel are utilising the services and offerings of their private practice law firms in a more holistic and collaborative way. The trend is to homogenise these offerings through single portals, which has a knock-on effect for the private practice law firms themselves. There is a general need for consultancy advice and off-the-shelf solutions that are cost-effective. Implicit in this need is also a requirement to be more productive. In this regard, most in-house teams talked in terms of early case management and better use of databases.

A Senior Lawyer sums up the issue: “I think the pressure on costs requirement has forced us to innovate ourselves internally. We have to demonstrate added value. It’s all very well providing a basic service but we also have to horizon-scan and generate income. That doesn’t mean reducing headcount or outsourcing but being more strategic operationally to make sure we are not seen as an overhead.”

Training, as mentioned above, is a continual need for in-house lawyers and one that private practice law firms are increasingly supplying. In general, in-house legal teams will follow the free training wherever they can get it. Law firms are becoming experts at offering this training, which is becoming far broader than legal training.

There is a plethora of MBAs on offer for in-house lawyers from private practice law firms who see this as a way to get closer to their clients. Even continental European law firms (usually slow to innovate) have jumped on this bandwagon; for example, Stibbe’s programme with INSEAD for in-house lawyers and its own associates.

Most innovative General Counsel feel that it is up to them to drive the client-lawyer relationship and to create the framework in which it can best flourish. This will no longer be on the basis of personal relationships. As one General Counsel put it, individuals will always be important in a service industry such as law. However, the personal connection between individuals will no longer be the driver of the relationship.

Neither cost nor value will be the single drivers of the client-lawyer relationship. As several General Counsel pointed out, the drivers will be contingent on the type of legal work or the specific project being outsourced, with cost and value considerations combining to suit circumstances. Underpinning this new approach is the fact that many General Counsel are sophisticated disaggregators of legal services.

One of the key transformations of the past five years is the acceptance by General Counsel that they are the ones who need to innovate. Several different GCs made this point across various industries and jurisdictions. As one General Counsel said: “The GC should take the initiative. It’s incumbent on us as a community to show that there are different ways of our needs being satisfied.”
Third-party providers

Legal Process Outsourcing (LPO)

Four years ago, in various surveys carried out by RSG Consulting, LPO was not thought to be a priority by many law firms, and many General Counsel were hesitant about testing out the cost benefits.

Now, outsourcing, offshoring, nearshoring are all firmly on the agenda for innovative legal departments. These providers have become ubiquitous on significant law firm panels. Many of the General Counsel demand that their law firms work with LPO providers on a regular basis to effect cost savings. These providers are being used for standardised work, essentially for contract review, legal research and major due diligence.

Five years ago, there were teething problems with some of the LPO providers but many of the innovative GCs have ironed these out and are deriving value from these suppliers.

Legal publishers

Another important alternative supplier to in-house teams in the legal market are the legal publishers who are developing smart off-the-shelf products and increasingly moving towards converging their different products. The three listed above have supported in-house functions in their innovations, particularly Thomson Reuters and PLC. The legal publishers represent a cost-effective alternative and their products are more streamlined to the in-house lawyers’ needs. They are competition to some of the client facing products that the law firms themselves offer clients as part of their added-value service.

Virtual law firms

The new kids on the block, these entrants are beginning to change the legal marketplace. Many General Counsel report favourably about Axiom’s services, saying that they are able to come in and truly work with the in-house legal team to deliver cost savings and better value. Increasingly, companies such as Vodafone and some of the major banks are using Axiom for higher value legal work.

Others such as Obelisk and Riverview are much newer entities but offer a different type of access and pricing model that is increasingly attractive to innovative General Counsel who are not afraid to give them a try and then report being pleasantly surprised by the service they receive.
Process efficiency

How to be efficient as an internal provider

Over the past two years, almost all of the General Counsel interviewed considered innovating to deliver greater value to their businesses through improved productivity and efficiency to be a top priority.

While GCs and senior in-house lawyers are moving up the value curve to play important roles as strategic partners to the business (effectively upskilling), process efficiencies at the broader department level are allowing legal teams to:

1. Demonstrate value and cost savings they can deliver to the business
2. Generate economic value and competitive advantage for their businesses
3. Manage larger, more diverse and more geographically spread legal teams
4. Continue to deliver value while allowing for more flexible working practices

A Senior Lawyer sums up the issue:

“I think the pressure on costs has forced us to innovate internally. We have to demonstrate added value. It’s all very well providing a basic service but we also have to horizon-scan and generate income. That doesn’t necessarily mean reducing headcount or outsourcing, but being more strategic operationally to make sure we are not seen as an overhead.”

Another important change has come as companies become more comfortable using external suppliers to efficiently resource work, which includes a variety of third-party and captive outsourcing and offshoring arrangements.

Other teams are looking at process improvement and quality management to improve performance, efficiency and to manage litigation costs. E-discovery solutions are now widespread for companies with US operations, and are becoming so for those in contentious industries in Europe.

The solutions employed by in-house teams to deliver efficiency gains can be grouped into the following categories, detailed later in the report:

- Greater use of technology
- Project and process management frameworks
- Document standardisation and simplification
- Document automation
- Improved know-how, information updating and sharing
- Integrated technologies
Expansion and the need to reduce costs and work more efficiently are driving GCs to seek out new technologies. The aim is to minimise human resources for repeat work and to see what processes can be automated without resorting to outsourcing.

We are seeing in-house legal departments make big strides in the adoption of new technologies and there appears to be a sea-change in their view of what technologies can do for their businesses. If we compare the prevailing mood amongst General Counsel in 2011 to that of 2008, there is a much wider acceptance of the efficiencies that technology can bring and a significant reduction in the fear or reluctance to experiment. Even small in-house functions are putting in place simple portals using off the shelf technologies to effect efficiencies and to remove the need for in-house legal to answer repetitive questions. This sometimes involves being smart at winning a piece of the tech budget but more widespread is an understanding that efficiency solutions are not expensive.

Louise Pentland at Nokia talked about how new technology can facilitate more flexible working for her team. She cites videoconferencing and online tools (which can also be accessed from her smartphone) as one of the biggest game changers, as it enables her and her team to work virtually from home.

At Nationwide, Liz Kelly is looking to expand the use of technology into her case management processes.

While a number of General Counsel expected their legal teams to grow in size, it would not necessarily be in line with the rate of growth of the business as a whole. Inorganic business growth, combined with the complexity of operating across multiple jurisdictions means many expect to have an increased workload. Using smarter technology tools to help manage this was an essential part of the process for in-house teams. Most felt that they were currently behind the curve when it came to use of technology and saw it as an opportunity to support future growth.

A senior lawyer says that “inevitably, more expansion means we will have to use more technology… If we get a bit bigger in non-European markets there will be more issues. We are getting to know Brazilian market risks [for example]. It’s hard tech-wise as we need to keep abreast of everything that is going on. If there are useful tools, we will get them”.

However, smaller companies still rely heavily on their external law firms for more complex and expensive technology solutions like case management systems, which are outside the scope of their own budgets.
Project and process management frameworks

The trend towards using project management tools and professionals both in-house and externally has become more apparent over the past three years. In particular, Six Sigma and Lean process management methodologies are winning advocates amongst the in-house community.

The GE Oil & Gas litigation team are using Six Sigma to manage litigation costs. While these processes have been used in GE’s manufacturing businesses for decades, there is a growing interest at a number of large businesses in applying them to legal processes – particularly litigation.

At the Nationwide Building Society, Liz Kelly’s legal team are looking at ‘Lean’ Process Reviews to ensure that not only her own department’s processes are more efficient, but that interaction with the company as a whole is kept as efficient as possible. The goal is to free up lawyers for more value added work in alignment with their clients within the institution.

In-house legal teams are benefitting from dedicated project managers, and some are using project managers seconded from other areas of the business or law firms for temporary support and knowledge transfer. Project management and better modelling of future workload allows GCs to manage fixed staff costs better and place less reliance on expensive external variable resources.

Document standardisation and simplification

By reducing time taken to reinvent or rewrite contracts or other legal documents over and over again, in-house legal teams have been able to demonstrate considerable savings to the business by introducing:

– Standardised NDAs
– Standard and simplified procurement contracts
– Standard term sheets for banks

In some cases, like the standard term sheets developed by Lloyds’ real estate legal team, the documents are comprehensive and contain ‘everything under the sun’. This ensures key legal points are covered so lawyers no longer need to sit in on every negotiation.

Others are greatly simplifying their legal documents in the process, shifting the mindset from one of comprehensive protection towards using more commercially pragmatic documents focused on prioritised risk areas. General Counsel say that simplified contract and procurement documents and NDAs have taken significant hours out of the drafting and negotiating phases and also benefit the business by freeing lawyers to spend more time concentrating on areas of strategic risk.

Document automation

While companies need scale and volume of repeatable work to make it worth investing in document automation technologies, there have been successful examples. In 2008 National Grid worked with Practical Law Company and Business Integrity to develop an externally hosted document building and workflow management system. This system allowed National Grid Legal to automate the generation of legal documents from precedents, with both internal and external users able to complete a web-based questionnaire. This then generates a bespoke, completed legal document based on a specified template. The software also tracks the workflow out to external law firms.
Some GCs who were interviewed felt that the work they handled in-house was too bespoke and individual for it to be worth investing in document automation or standardisation tools. Instead, their focus was on technologies and processes to facilitate better knowledge management.

Know-how tools are benefitting legal teams by increasing the transfer of information and knowledge between diverse teams and regions, facilitating in-house lawyers who are handling more complex work, and allowing in-house lawyers to look up answers directly, rather than paying for repeat advice from external counsel.

For example, the Man Group was piloting an internal knowledge management system in 2010. The company was also looking at document management and sharing systems for the in-house legal team. A full roll out of more formal document sharing systems was still pending a more thorough assessment of appetite and feasibility.

The KM team at BAE Systems designed and developed a global knowledge and collaboration platform called Lawyers Virtual Information System (LVIS) for the legal function. The brief was to

“utilise emerging technologies to make lawyers as efficient as possible by giving them quick and easy access to the information they needed.”

It provides a ‘one-stop shop’ for internal and external legal information, including legal know-how, experience and expertise, current awareness and legal training materials. The team looked at off-the-shelf products, but none matched the specification needed so the platform was designed and built internally on a Microsoft SharePoint platform. It interfaces directly with PLC content.

The BAE KM platform represents one of the most advanced in the European market and is sure to be followed by other companies over the coming years. Legal teams are also looking for external consulting advice and help with development, and more frequently looking to invest in ready-made third party platforms.

The next generation of information resources need to plug-in or interface with these systems for them to be most effective. One interesting feature of the BAE drive to efficiency was the way in which they made use of a dedicated knowledge manager seconded to them from Linklaters for a year, who helped them make big strides in improving their KM abilities. This was a good example of leveraging private practice law firm client service offerings.

Improved know-how, information updating and sharing
A large proportion of the GCs interviewed said their companies were now consolidating, often following mergers or acquisitions in new jurisdictions. The priority for these General Counsel is to integrate legal teams spread across diverse regions and business lines. A key area of focus has been putting in place processes and systems for knowledge transfer across the legal function and between legal and the business.

A number of GCs mentioned that they were developing know-how systems internally to start pooling information or to interface with existing systems and external resources like PLC.

Knowledge sharing helps reduce the cost of repeat advice, builds data to use as benchmarks for assessing and costing risk and to inform litigation decisions, and helps create ‘one team’ for geographically spread legal functions. Intranets and wikis can also be important tools to help the legal function better integrate with the business. Some of the solutions General Counsel have recently implemented are:

- Improved intranets
- Internal knowledge database/know-how banks
- Wikis for knowledge sharing
- Document sharing technologies
- Delta software for document comparison
- Weekly email systems to check nature of projects

Deutsche Bank, for example, is investing in better technologies to share knowledge and transactional information internally.

*Within my team I have set up an internal knowledge database, pooling know-how. We keep track of all transactions we work on, all key issues, key terms etc. Having that knowledge is very important, it enables us to keep on top of everything. All of this is done internally. It’s what people expect when they call us.*

To better integrate across a diverse legal team and with the business, improved knowledge management and sharing solutions are becoming essential.

A number of in-house teams have undergone major reorganisations to remove business unit and regional silos, and to ensure lawyers are working on the frontlines of the business. Better integrated technologies provide the infrastructure or platform on which these global legal functions are developing better communication lines and working in teams that
bridge geographic boundaries. Some technologies like BluePrint OneWorld are used to help in-house teams manage the company secretarial aspects of complex global businesses.

General Counsel are more commonly putting in place their own know-how management systems to filter content from law firm portals. A senior in-house lawyer at Vodafone says:

“There are so many passwords, microsites, that people glaze over when they hear there is another one.”

To consolidate unconnected information sources, the company is using Linex Systems to provide a single interface for the internal team.

At mid-sized companies, many are exploring how to use standard products like Microsoft Sharepoint to share knowledge and manage work processes. One of the reasons in-house teams lean to Sharepoint is because their companies already use Microsoft products and it is a relatively cost effective solution. Other companies are more sophisticated in their awareness and use of new technologies, but face budget constraints. Technology solutions have to demonstrate a clear return on investment, so those related to risk management or reducing litigation costs are the most prevalent.

Even a small Portuguese bank such as Banif has adopted digital technologies.

“We have some developments. We don't have the means that big law firms have for great systems but we have the basic ones. All our documents are 100% digital. We've built an in-house system to manage tasks. The whole team knows the tasks are given out, they can access it, they know the deadlines, they know the person in charge. If the person whose task it is can't come in, the people share it. It's not much technology compared to others perhaps but it is a start.”

However, the majority of General Counsel interviewed in 2011 felt that their use of technology was behind the curve, and expect investment in more advanced technologies will help meet these challenges in the future.

Technology investments were also felt to be driven by specific market changes or commercial drivers. Commonly mentioned areas of future technology investment included:

![Market changes and drivers vs. Process and efficient solutions](image-url)

<table>
<thead>
<tr>
<th>Market changes and drivers</th>
<th>Process and efficient solutions</th>
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| Managing growth and integrating diverse legal teams | – Know-how, information updating and sharing  
– Knowledge management systems  
– Greater standardisation of legal work  
– Standardisation of processes and procedures  
– Video conferencing/ telepresence |

| Reducing costs and increasing efficiency | – Better use of technology  
– Project/ task management systems  
– Online contract management  
– ‘Simplify’ for IPR and contract management  
– Outsourcing and offshoring  
– Six Sigma and quality management processes  
– Reducing litigation costs through e-discovery  
– Technologies to facilitate remote working  
– Know-how, information updating and sharing to reduce repeat advice  
– E-discovery tools |
Controlling costs

Budget cuts which followed the financial crisis have stayed in place, and General Counsel are continuing to drive better performance and value with less to spend. At the same time, GCs need to negotiate greater complexity and risk with fewer resources.

Some, like Nokia, have already undergone large scale reorganisation of their legal functions, while others are looking to make more incremental efficiency improvements through better utilisation of staff and greater use of technology.

A major banking GC said that they have internally had to acknowledge that the cost of legal services has grown and ensure the business understands this. For her, cost pressures mean doing ‘more with the same’.

Value resourcing initiatives including offshoring and outsourcing

In-house legal teams are generally ahead of private practice firms when it comes to seeing the potential for both cost-savings and process improvements through outsourcing and off-shoring. In particular, we have seen large and mid-sized multi-national companies set up captive legal outsourcing operations to date. Novo Nordisk General Counsel, Ole Ramsby explains their operation was

"started by the corporate finance group in Bangalore. They demonstrated that this was a very cost-effective and quality-efficient set up so we decided to piggy back on that structure to turn this from a financial shared service centre into a group legal service centre including patents, lawyers and HR”.

Other legal teams, like Barclays, BT and Colt have set up significant captive legal teams in lower cost jurisdictions such as India. While BT’s team handles high volume, but fairly routine work, newer setups like the India-based Colt legal team are supporting the business across the full range of legal work from general support to advising on key strategic matters like cross-border M&A deals.

What is new is that various LPOs are now targeting General Counsel as the key group that will purchase their services. They see themselves as the brokers between GCs and private practice, the third stakeholder that can sometimes create consensus.

More and more General Counsel are looking to LPO to drive efficiencies for them. Some LPOs are perfecting the art of initial consulting to effect sales and are examining the value curve and optimum utilisation for in-house lawyers.
A theme in General Counsel responses over the past three years has been the need to have long-standing relationships with external advisers, in which the ability ‘to talk frankly’ on fees is an essential component.

Special billing arrangements and open dialogue on pricing was seen as essential to managing costs effectively. As one interviewee said:

“They’re bringing that value [price flexibility] but in addition they’re bringing something more which is more thoughtful about the relationship between us.”

A number of General Counsel felt that they received more value from external advisers where relationships are built up over the long-term and also felt that price negotiations are more easily conducted in a relationship characterised by trust and longevity.

A UK banking GC said:

“We are starting to look at retainer based fee models like Pfizer’s and we have spoken to them to see how it works. We are looking to have one in the UK across the whole bank, and now looking to do something significant and similar in US. We have just really brainstormed and looked at what other people do. Law firms are approaching us about this now. If you can give a firm certainty and we have a cost saving then it appears to be a win-win”.

Controlling external costs – relationships and different fee models
Performance metrics

Management information

GCs say their internal clients are demanding more details and financial data on legal performance. They want to know: How can we measure performance? What the overall cost? What is the cost of a matter? What is the equivalent internal or external cost?

In response, a major UK bank has made major advances in the management information data it is collecting on legal work, time spent and resources used.

A senior member of the legal team said:

“Through that data we are able to offer a more consistent service based on the level of complexity required. Previously it was pretty random – if there was no one free to do a job internally, we go externally. It was a binary choice. What the MI has allowed us to do is judge based on the level of complexity of a matter whether we use a paralegal or secondee, whether we do it internally or if we need to go externally. So we’re making more financially astute decisions on what we actually need and what we are prepared to pay.

If we go to a law firm, we use our system for a relatively simple bidding process. We get a number of quotes and feed that in. It drives better external cost management and it builds the data over time.

Data is helping to inform decisions, which ultimately helps our clients. They can see we’re taking the most sensible route — not just the cheapest option, but the best value option to do legal work”.
Benchmarking internal costs against external advisers:

Increasingly, GC are expected to produce legal budgets and track spend at more granular levels. Some are starting to experiment with different ways of demonstrating the value they deliver and of measuring the cost of the legal function. However, most say there is still a need for better metrics and benchmarking data. GCs are also turning to outside counsel to help provide industry data or assist in collecting and mining the legal team’s own information to produce more valuable benchmarks.

For more routine or commoditisable work, some felt it was simplest to benchmark against the cost of using external advice in order to:

- demonstrate internal cost effectiveness or value to the business
- manage internal resourcing levels
- help to decide which work to outsource
- move the internal legal team up the development curve

Other metrics collected include:

- Level of employee engagement within the legal team and compared to other areas of the business, using standard frameworks or third party consultants
- Measuring time saved in more efficient compliance training programmes (staff hours)
- Client satisfaction rating, via surveys.

In 2009, Colt Telecom had developed metrics to measure and demonstrate the value it adds to the business:

“Time recording is used to measure productivity and to ensure optimum resource allocation across the Team. Customers are regularly surveyed to assess their perception of the timeliness, quality and efficacy (ultimately, value overall) of legal support. In the regulatory area the team tracks delivery of hard cost savings across Europe resulting from regulatory action, challenge and lobbying. Last year the regulatory team delivered €12m of hard savings, transforming a ‘cost centre’ into a ‘profit centre’.”
### Characteristics of the most impressive General Counsel

The following list represents those qualities that were cited as the ‘number one’ traits of impressive General Counsel by interviewees. They are listed in descending order of number of mentions.

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<tr>
<td></td>
<td>Leadership and management</td>
<td>Business acumen</td>
<td>Ownership and having an international (or new opportunities) mindset</td>
<td>Communication</td>
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Interestingly, nearly all interviewees mentioned the importance of leadership. It was by far and away the most mentioned characteristic of impressive General Counsel.

Whilst being the primary adviser to the CEO is clearly a core function of General Counsel, perhaps the quality that will most set them apart from rank and file in-house lawyers will be the ability to manage, to empower employees and realise value from individual department members.

The management ability required is both broad and deep. It encompasses people management, department management, project management and crisis management to name a few. Additionally, GCs are required to manage over the business and over departments where they have no jurisdiction so they will need to ensure buy in to such projects as global compliance programmes. As one General Counsel put it:

> “Now the GC needs to ensure that proper systems are created that allow regulatory requirements to proliferate across the organisation so that’s a responsibility not only on the strategic level but also on the managerial level”.

"Now the GC needs to ensure that proper systems are created that allow regulatory requirements to proliferate across the organisation so that’s a responsibility not only on the strategic level but also on the managerial level".
Business acumen was the next most mentioned characteristic. One organisation identified it as one of the key standards against which excellence is measured in in-house lawyer appraisals. For others, the ability to move seamlessly in the business as an equal to commercial colleagues on their ground was seen as an impressive trait.

Following on from this, interviewees mentioned both ownership and internationalism as equally impressive traits. And finally, some interviewees were impressed by General Counsel who managed to ‘successfully broadcast their success’ in their organisations.
The move to complexity

The greatest challenge to General Counsel over the coming five years will be the pace and complexity of change led by rapid globalisation and global economic shifts, increasing and varied regulation across different jurisdictions and advances in technology.

Like the early 2000’s, when the dot.com bubble burst and the spate of corporate fraud scandals brought in new regulation, the financial crisis of 2008-2009 initiated another phase of accelerated change and with it the potential for General Counsel to take on more responsibility and importance within their organisations.

To keep pace GCs must be able to adapt to and manage change both within their legal teams and the business. Nearly all General Counsel in the sample group talked about the greater complexity of their roles. This complexity is key to understanding how General Counsel innovate.
The drivers of complexity:

1. **Rapid globalisation**
   - Cultural challenges – GCs have to be international
   - General Counsel role and business expectations vary from the Americas to developing and established economies to Asia
   - Compliance programmes need to be global and regionally attuned
   - Communication challenges with a worldwide legal team
   - Purchasing in different jurisdictions is more difficult to manage
   - Enforcing global standards of legal service delivery, ethics, and professionalism

2. **Increase in regulation**
   - Knowledge sharing: need to keep up with tech advances in KM so the department communicates well and delivers value products
   - Common portals: need to understand how to derive best value from external advisers through shared platforms
   - Social networking: using tech to collaborate with peers, suppliers and industry trends
   - Tech makes business faster which makes the task of servicing it harder for often under-resourced legal functions
   - IT investment decisions: complex array of products, law firm offerings make IT purchasing a required skill for in-house team

3. **Advances in technology**
   - Companies expect GCs to pre-empt or influence new regulation
   - In-house departments have more functionality and responsibility
   - Many GCs report that post credit crisis their roles are transformed, partly because of a shifting regulatory landscape
   - Enforcement powers of regulators focuses more attention on GCs to help the business manage risk and avoid large fines
   - Financial crisis and new regulatory landscape forces re-evaluation of risk management

<table>
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<tr>
<th>Impact of globalisation</th>
<th>Impact of technology</th>
<th>Impact of increased regulation</th>
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<td>Knowledge sharing: need to keep up with tech advances in KM so the department communicates well and delivers value products</td>
<td>GC has higher profile in the company</td>
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Most importantly, the drivers of complexity mean that the General Counsel role is changing to suit the evolving needs of the business. For example, the table above shows some of the key impacts of the complexity drivers on the in-house legal function.
What are the GC’s challenges?

Inherent in the increasing complexity of the General Counsel role is a whole suite of challenges.

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<th>Organisational challenge</th>
<th>Individual challenge</th>
<th>Professional challenge</th>
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| Achieving buy-in for risk management strategies, and support of business and the board for a compliance culture within company. | Capability and time: to develop skill set to become business leaders.                 | Increased scrutiny and personal liability: GCs need suitable protections in place, such as coverage under insurance policies. GCs must continue to be effective gatekeepers, and be able to say ‘no’.
|                                                                                         |                                                                                      | Resistance from within the profession: the view that in-house lawyers should remain within the traditional confines of the role and not aspire to being generators of economic value or business leaders. |
| Dealing with resistance from within the company particularly from senior management who may feel threatened by GC’s increasing status. | Conflicting pressures: GCs will need to combine role as an adviser with being a team leader and manager and be flexible enough to adapt to new responsibilities and priorities. | Working with regulators: there is a perception in the in-house community that the regulators could be easier to work with. |
| Managing change: GCs must be adept at managing the change of rapid globalisation and changing economic and regulatory environments in high pressure situations. | Lack of role models: as the role changes, there can be a lack of role models for aspiring GCs. | Lack of collaboration: the in-house community and private practice have still not fully explored how they can work together to grow lawyers who can occupy leadership roles in business. |
| Managing expectations of the legal function: GC must drive and shape senior management’s expectations of the function as a whole, and of their role specifically. | Lack of appreciation: for managing internal legal work-load and other ‘self-starting’ priorities in addition to business legal advice. The value delivered by an in-house lawyer has been notoriously difficult to define. | |
| How to be perceived as delivering value alongside other corporate service departments, when the law is such a different function to HR or finance in terms of measurability. | Self-awareness: traditional legal training does not equip GCs to be good managers or business people. Developing an understanding of their own strengths and weaknesses, and as one GC put it, “to know what they don’t know” can be difficult. | |
| Being viewed as a partner and not as an obstacle, as legal traditionally has been in the past. | Communications skills: another deficiency of the legal training. Until the lawyer arrives in-house, there is little to equip them with the necessary language to communicate with non-legal business colleagues. | |
| Doing more with less; a common refrain from General Counsel. The in-house function is still expected to deliver an A1 quality service with smaller budgets and less resources | Finance skills: the need to understand balance sheets and numbers can come as a shock to those who chose law as a more literary option. | |
RSG’s recommendations for general counsel

The following are some brief suggestions for General Counsel as to how to overcome some of the challenges which face them. They are straightforward, common sense suggestions but difficult to implement in practice sometimes. Out of all them, perhaps the first two are the easiest with the last being the most tricky, but probably the most important!

- Join a GC peer group and share difficulties, knowledge, learning and expertise
- Invest in training and development
- Harness the support of external counsel, both in resources, training and other forms of partnering
- Win the trust, confidence and active support of the CEO