TRILEGAL

How to get the best out of collaboration between in-house counsels and law firms

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The business and regulatory environment in India is becoming increasingly complex. In the face of such developments, in-house legal teams are actively onboarding law firms to handle critical legal procedures. In a survey commissioned and published by Wolters Kluwer, "93% of corporate compliance departments have outsourced work in the past three years".

Given the environment in which legal and compliance market is booming, the nature of this cooperation between general counsel (GCs) and law firms has also experienced a pragmatic shift. Both entities are collaborating more frequently on tactical and strategic issues, as opposed to the trend in India when interactions were limited to litigation or complex merger and acquisition deals.

How law firms enable in-house counsels

Several factors induce corporate legal departments to onboard law firms. They enable in-house counsel to lower overhead costs by hiring highly specialised on-demand skilled external attorneys without compromising quality.

Secondly, law firms allow GCs to enhance operational efficiency with respect to shifting market conditions and seasonal demand, enabling even smaller firms to take on large cases.

Lastly, with assistance from external counsels, companies can seamlessly handle the analysis of new areas of law, conduct risk assessment to identify legal, compliance and operational challenges, and in turn re-allocate their in-house legal expertise to their core issues.

Tips for law firms and in-house counsels for effective collaboration

1. **Build strong engagement beyond project-specific deliverables –** Building a reliable and strategic partnership in which law firms are valued and seen as trusted advisors by GCs requires both to collaborate beyond agenda, helping law firms better understand their clients' strategies and priorities. An article by law.com points out that the relationship between the two often goes awry due to a lack of communication or "heart-to-heart" conversation. Hence, GCs and law firms must establish a process for regular communication not only to explain their requirements to outside counsel but also to discuss collaborative and non-transactional aspects.

2. **On projects, define clear objectives and scope of the engagement** – Transparency around the scope of engagement and the issues faced by GCs can help law firms determine the right advice and support to offer. Additionally, it is vital to define the measures of success against the goals. For instance, determining the timelines, such as the realistic timelines of a transactional deal and or obtaining a settlement in disputes matter. Clarifications on identifying the resources that will be deployed from both sides during the engagement can also bolster engagement.

   Often, external counsel agrees to a team and fee estimate that appears appropriate to the transaction and the timeline. During execution, in-house departments often observe significant variations – leading to questions around staffing (and billing). If not resolved with the required maturity, issues of this nature are fertile ground for seeds of mistrust between client and counsel.

Therefore, it is absolutely critical to keep the in-house team informed well in advance about how the assignment's requirement or its timeline has taken a turn where the original staffing plan would not be workable. External counsel must also, at this point, provide a ballpark variance in the fee so that the in-house counsel can budget appropriately. This is an essential conversation that must begin as soon as an anomaly is discovered and must continue throughout the lifecycle of a deal or litigation.

3. **Discuss and agree on the right expertise required to solve the issues** – It is vital to determine the best-suited expertise for the engagement, as a matter may involve multiple expertise. For example, an internal investigation today cannot possibly run without inputs from at least two critical teams – investigation and employment. Oftentimes, corporations focus too much on selecting the right lawyer, and in the process, ignore the law firm. However, it is equally essential to ensure that the law firm with which the lawyer is associated is equipped with adequate resources to satisfy the engagement.

   Similarly, the law firm's resources must be scalable and have substantive experience in handling complex and multi-disciplinary cases. In the era of social media marketing, clients find it attractive benchmark recognitions, rankings and awards as guides to capable counsel; and are drawn towards the image crafted than what might be the actual strength of a firm or a lawyer. Therefore, a more traditional approach of inviting a few firms for an interview with their relevant teams and appropriate credentials is strongly advisable.

   It is also advisable for in-house counsel to adopt varied strategies, for example, to call for oral or written submissions from the candidates about their respective strategies in a problem set loosely based on the issue that the in-house is looking to resolve. In an era of increasing expertise-based law practice, in-house counsel must invite a law firm to share as much possible information about prior experience in narrow expert areas without breaching confidentiality.

4. **Transparency around billing practices** – Determining the suitable billing model based on the nature of engagement should be part of initial research conducted by corporate legal departments to select a law firm. In-house teams should clearly specify what billing practice works in their favour – contingency arrangement, in which the law firm obtains a fixed amount or a percentage of the monetary reward resulting in a favourable verdict (if permissible in the relevant jurisdiction); billing basis the hourly rate of attorneys engaged; or hybrid fee arrangement in which involves paying a small percentage of the firm's hourly fee plus a contingency fee, which depends on the outcome of the case. To make an informed choice and avoid billing conflicts in later stages, GCs can ask for an estimated financial breakdown for the various phases of the deal/litigation to avoid over-monetising the relationship.

5. **Leverage technology for better project management** – Given the post-pandemic scenario, maintaining communication only via emails may appear lacklustre. As a result, law firms are increasingly enhancing their technology offerings to serve their in-house clients. According to Wolters Kluwer's 'Future Ready Lawyer 2022: Leading Change' report, 91 per cent of corporate legal departments consider it important to hire a law firm that leverages technology. Hence, using software for better project management, communication, and data protection, can result in seamless collaboration between both.

Conclusion

With corporate legal and compliance departments facing an increasing burden on their time and resources, onboarding the right law firms can help businesses drive efficiencies. However, such a relationship can be leveraged only when utilised strategically with clear expectations and an open pathway for communication. To take the relationship further, both sides can also establish feedback mechanisms to share their experiences and learnings.

**Views expressed are personal.*