

# The Evolving Role of In-House Counsel

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# Topics for Discussion

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- 1. What has been the Traditional Role of In-House Counsel?**
- 2. Why and How the In-House Counsel Role has evolved over time?**
- 3. What are the core competencies of successful In-House Counsel and the expectations of senior management?**
- 4. How high performing In-House Counsel build Trust and Influence with the business?**
- 5. Balancing Risk, Rewards and Providing Strategic Advice.**
- 6. How In-House Counsel remain relevant and continue to add value to the business?**
- 7. What Changes and Challenges are coming over the horizon that In-House Counsel need to be prepared for?**

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# 1. What has been the Traditional Role of In-House Counsel?

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- To provide functional technical legal advice.
- Oversee Governance, Ethics and Compliance.
- Administration of Company Policies, Guidelines and the Legal Function.
- Instructing and managing Outside Counsel.

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# 1. What has been the Traditional Role of In-House Counsel?

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In-House Counsel have traditionally been seen, or perceived, to be:

- Highly conservative in their advice and narrow in the view of the scope of their role.
- Aim to mitigate risk and liability significantly, seemingly without regard to its impact on business priorities and objectives.
- Stifle Innovation and Creativity.
- Somewhat disconnected from the business in general.
- Reactive rather than Pro-Active.

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## 2. Why and How the In-House Counsel Role has evolved over time?

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### Why the role of In-House Counsel has evolved?

The core roles and responsibilities of In-House Counsel remain much the same as they have always been, to:

- Identify legal issues and provide sound technical legal advice.
- Oversee and ensure good Governance, Ethics and Compliance across the business.
- Administration of Company Policies, Guidelines and the Legal Function.
- Instructing and managing Outside Counsel.
- Mitigate Risk and Liability for the business.

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## 2. Why and How the In-House Counsel Role has evolved over time?

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However, due to many pressures, influences and events the role of In-House Counsel has evolved significantly over the last 10-15 years as a result of:

- Rapid advances in Technology.
- Disruption by Innovative Companies.
- Rapid Globalization of trade and information availability and exchange.
- A multitude of recent Corporate scandals, Economic crisis and Financial Market turmoil.

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## 2. Why and How the In-House Counsel Role has evolved over time?

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- Heightened focus on Corporate Governance, Compliance and enforcement.
- Increased market competition, mergers, acquisitions and market concentration.
- Internal Corporate productivity, efficiency and cost savings initiatives.
- The ever increasing workload of In-House Counsel, while at the same time being expected to do “more with less” as far as budget and head count, as well as streamlining and standardizing processes and workflows to achieve efficiencies.

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## 2. Why and How the In-House Counsel Role has evolved over time?

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### How the role of In-House Counsel has evolved?

The role, and its scope, has for many In-House Counsel expanded significantly.

General Counsel and their In-House teams have become responsible for an ever broadening range of areas within the business, such as:

- Regulatory and Government Affairs.
- Corporate and External Affairs.
- Human Resources.
- Ethics and Compliance
- Overall Enterprise Risk and Crisis Management.

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## 2. Why and How the In-House Counsel Role has evolved over time?

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- Audit and Compliance Reporting.
- Corporate Security, Cybersecurity, Information Security and Data Privacy.
- Quality and Control Systems.
- Social and Corporate Responsibility.
- Aviation.
- Company and Brand Reputation.
- Even Business Functions.

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## 2. Why and How the In-House Counsel Role has evolved over time?

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Also the role of the General Counsel has evolved in many companies to become the Chief Legal Officer.

The increasing importance and prominence of the top legal role has been the result of:

- The expanded scope of the role and responsibilities.
- The increased complexity, expectations and challenges of the role.
- The fact that the role has become more strategic nature.
- Recognition of how crucial Legal Function leaders have become to business success as an integral members of C Suite leadership teams.

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### 3. What are the core competencies of successful In-House Counsel and the expectations of senior management?

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- To act as an enabler and strategic partner of the business, not merely as a Service Provider or Support Function.
- Be an active, engaged and integral member of the Leadership Team.
- Have, and continue to develop, a deep knowledge and understanding of the business.
- Use their legal skills and in-depth business knowledge to provide strategic and creative legal solutions to business issues.
- Be technologically savvy, innovative and receptive to change.

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### 3. What are the core competencies of successful In-House Counsel and the expectations of senior management?

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- To provide clear, concise, pragmatic and commercially oriented legal advice using business terminology.
- Ensure that the Legal Function business plan objectives are fully aligned with the objectives of the Company.
- Be highly attuned to the Company's tolerance and propensity to assume risk.
- Help develop financial and risk management strategies and play an active role in management of the business.
- Understand how and where the Company makes its money and where future growth is likely to come from.

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### 3. What are the core competencies of successful In-House Counsel and the expectations of senior management

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- Safeguard and protect the Company from not only legal issues and challenges but be the guardian of the Corporate Brand and Reputation.
- Have or develop management, business, financial and leadership skills.
- Actively develop soft skills such as people skills, social skills, communication skills, social intelligence and emotional intelligence.
- As much as possible provide real time legal advice.
- Be a great listener.

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## 4. How high performing In-House Counsel build Trust and Influence with the business?

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- Know the business, the industry and the competition.
- Practice collaborative and cross functional problem solving.
- Avoid the word NO.
- Truly value added legal advice should in turn lead to trust and influence.
- Know the tolerance for risk of your Company.
- Great management I have found will always value and appreciate collaborative legal partners.

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## 4. How high performing In-House Counsel build Trust and Influence with the business?

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- Try to walk the fine line between developing and maintaining a close relationship with business colleagues, whilst also being able to provide them with firm legal advice (which they may not wish to hear or agree with).
- Act as a facilitator, connector and enabler between business functions.
- Persevere - Trust and Influence takes time and patience to build and develop, and wont happen over night.
- Trust, Respect and Influence can often come through navigating the business and management through a crisis or major legal challenge.

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## 5. Balancing Risk, Rewards and Providing Strategic Advice.

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Almost all business activities involve some level of risk.

In very limited circumstances some activities might be considered no or very low risk and on the other end of the spectrum very high risk or even illegal.

Everything else is somewhere in between depending on the circumstances.

The level of risk involved or assumed by the business can be influenced by many factors, for example :

- The type of industry and level of regulation of that industry.
- Industry norms and accepted practices.
- The level of competition in the market.

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## 5. Balancing Risk, Rewards and Providing Strategic Advice.

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- Management experience generally and an individual's subjective tolerance for risk.
- Whether the Company is public or private.
- Current Industry and Company overall performance and growth.
- Overly aggressive business objectives, strategy and commercial targets.
- An In-House Counsel's level of experience, knowledge of the business, the industry and competitors.
- The level of trust and influence that the In-House Counsel has developed with management, and their ability to advocate for a particular course of action.
- The degree to which the legal functions budget and headcount have been cut.

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## 5. Balancing Risk, Rewards and Providing Strategic Advice.

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The impact of excessive risk taking can of course lead to litigation, regulatory issues, the imposition of fines, damages and / or restrictive undertakings etc.

However damage and impact to a Company can extend well beyond these issues.

Damage to a Companies reputation, brand value and consumer trust can be significantly higher, not just in monetary terms and can occur extremely quickly in the social media world we live in and take years to recover from. (eg Toyota, VW, Equifax etc)

So for In-House Counsel to be well equipped to balance the risks with the rewards and provide strategic advice to help the Company and its management successfully navigate commercial enterprise, I'd suggest keeping these factors in mind.

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## 6. How In-House Counsel remain relevant and continue to add value to the business?

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There are many ways in which In-House Counsel can proactively take steps to remain relevant and add value.

- Know the business, the competition and the industry intimately.
- Be a visible and an engaged business leader.
- Be innovative and embrace change, its the only constant we have these days.
- Take a strategic and commercial approach to the legal advice you provide.

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- Actively develop soft skills such as people skills, social skills, communication skills, social intelligence and emotional intelligence.
- Participate in the business planning process and ensure the Legal Function business plan is aligned with the businesses objectives.
- Aim to be flexible, adaptable, agile, affable and approachable.
- Develop and invest in your people, they are really the only asset a Legal Function has.
- Try to expand your skill set in the areas of management, business, finance and leadership.

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## 6. How In-House Counsel remain relevant and continue to add value to the business?

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- Demonstrate that you are a business advisor and team player that just happens to be the Company In-House Counsel.
- Try to make the legal function an indispensable part of the business.
- Continue, or develop the skill, to walk the fine line between having close relationships with business colleagues, but also being able to provide them with firm legal advice when necessary.
- Be the ultimate business partner that the business turns to first for counsel and advice, not just on legal issues but business matters as well.

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## 6. How In-House Counsel remain relevant and continue to add value to the business?

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- So be proactive, take action and have a plan for the future. Its essential for you to be able to demonstrate your value to the business and maintain a seat at the table to remain relevant.
- Safeguarding the future of the legal function as an integral part of the business will be critical to the long term success of your business.
- If your unable to remain relevant you run the risk of being seen as just a cost centre service function, that will lose their ability to maintain the trust of management or influence the business and its strategic objectives.
- An irrelevant legal function, may then be subject to significant budget and head count cuts; or worse be outsourced!

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## 7. What Changes and Challenges are coming over the horizon that In-House Counsel need to be prepared for?

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What will the future hold?

- The pace of change throughout the world will continue at an exponential rate.
- The pressure on In-House Counsel and expectations from the business will only increase.
- The role of In-House Counsel will continue to evolve and expand in scope and complexity.
- The cost of running a legal function as well as outside counsel costs are likely to increase.
- Legal budgets and head count are likely to decrease, continue to be squeezed to deliver more with less and be under heightened scrutiny.

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## 7. What Changes and Challenges are coming over the horizon that In-House Counsel need to be prepared for?

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- The size and structure of In-House Counsel teams are likely to become smaller in size, flatter and less hierarchical.
- As the role, scope and responsibilities of In-House Counsel continue to expand generalist In-House Counsel will likely be in higher demand than In-House Counsel subject matter experts.
- Alternate Legal Service Providers of outsourcing, insourcing and technical solutions at lower cost will increase significantly in number, become more mainstream and continue to steal market share from traditional law firms.

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Technology will play an ever increasing role in the provision of legal services through advances in areas such as the following:

- Continuing transformation of the internet. Billions more people online. Billions more network devices using and accessing billions more terabytes of digital data.
- Internet of Things (IoT).
- Artificial Intelligence (AI) - Chatbots, Job Automation.
- Blockchain - digital secure protocols to execute transactions. Current trials in Banking, Government, Healthcare, Insurance, Manufacturing, Music, Consumer Goods, Stock Transactions, Real Estate etc.
- Crypto currency or tokens (Bitcoin) and Digital Transactions.
- Cybersecurity, Phishing Attacks, Cyber Crime and Cyber Terrorism.
- Privacy - access, exchange and control of Information. Data Breaches and Protection.
- A host of platforms, tools and solutions that have not even been invented yet.

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# Thank You

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