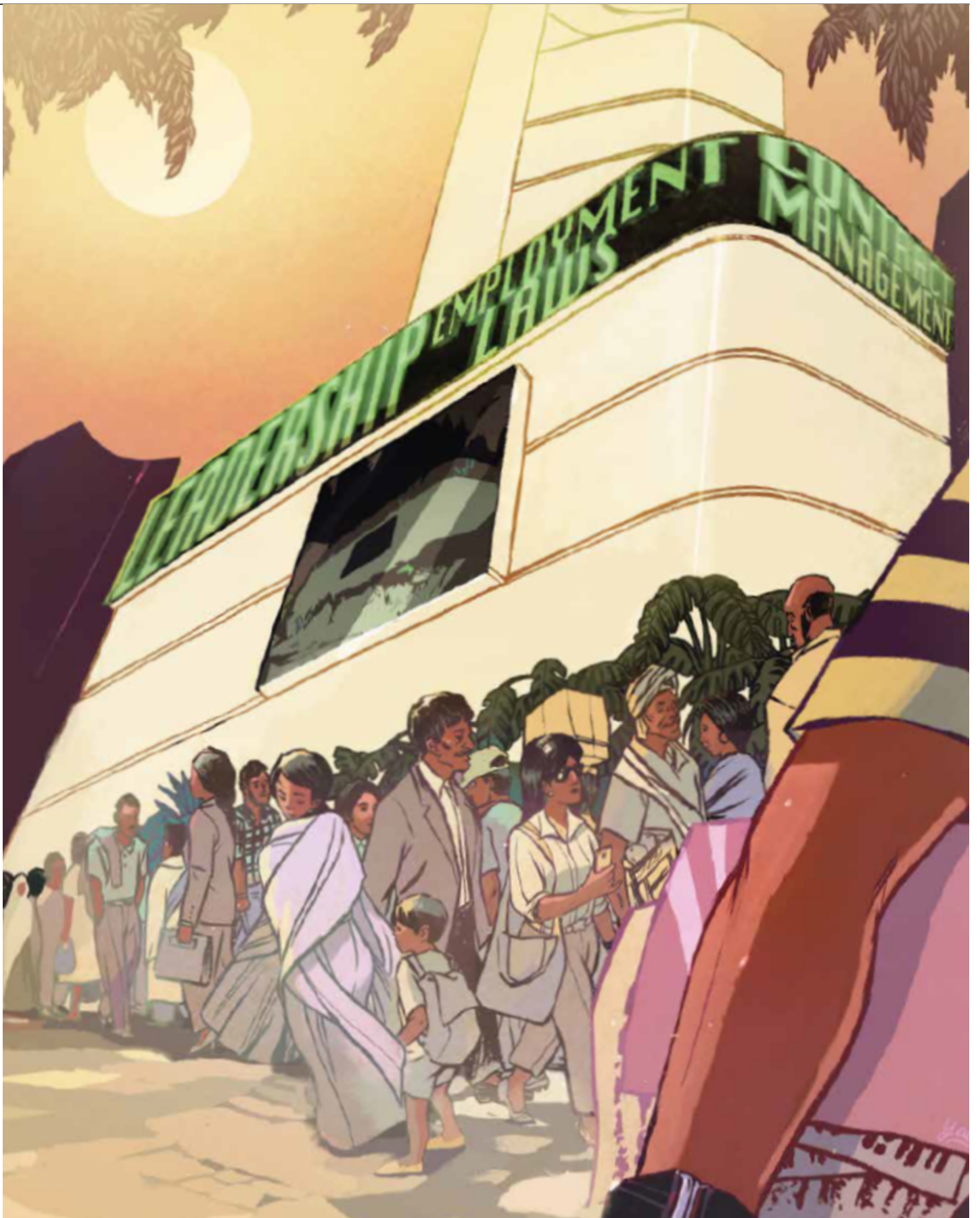




Best Practices: Hiring and Training In-house Counsel in India

Employment and Labor



CHEAT SHEET

- **Moving away from firms.** Some young lawyers in India are finding in-house positions more attractive compared to firm work. Companies in the subcontinent must be cognizant of the desires of this new generation of legal talent. Continuous learning programs are vital to attracting top talent.
- **It's a seller's market.** The overwhelming demand for budding lawyers in India means corporations must work to retain their in-house counsel. This requires offering in-house counsel development initiatives such as cross border projects, visible career progression paths and a diverse office.
- **Maintain a global outlook.** India's ever-globalizing nature produces unique challenges for in-house counsel. The in-house counsel must be able to juggle varying standards of consumer and data protection across diverse jurisdictions.

Business models in India are changing and becoming more dynamic, complex and global due to the rise in outsourcing work, business expansion, ever-rising development trends in information and computer technology, and cross border joint ventures and M&A. At the same time, the more intrusive and prescriptive legal and regulatory environment that has grown from the global economic crisis is driving how businesses operate and the decisions they make. It is imperative that Indian in-house counsel, like all in-house counsel, enlighten themselves and receive business training to help shape commercial strategy and achieve risk management objectives.

The role of the law department in the Indian subcontinent continues to grow in size and complexity, and the composition of departments is becoming more varied in terms of skillsets, ages, backgrounds and career objectives. Law departments deal with multiple jurisdictions and international culture and transactions. It is challenging and more difficult for India's law department leaders to manage this highly diverse set of employees. Therefore, it is necessary to have innovative methods to find and develop the right in-house counsel and share best practices and expertise.

In a very challenging business world, in-house counsel are being called on to play a greater role in risk management and further contribute to the growth of the organisation. Challenges include increasing competition, economic dynamism as well as the imperialistic thrust for more of the outsourcing industry in India. Considering the above factors, it is crucial for new in-house counsel to know best practices of various industries and organisations in hiring and training legal talent in India.

The Indian economy has gained momentum over the past decade or so; with this improving economic scenario and favorable conditions for foreign direct investment, many international and global companies have set up offices as domestic Indian companies also expand. The Indian multinational companies and foreign multinational companies are required to comply with additional anti-bribery, antitrust, data privacy and anti-money laundering laws apart from commercial contracting and employment laws. These compliance related requirements have also increased demand for skilled legal manpower in India.

In order to provide that manpower, the Indian legal profession today consists of approximately 1.2 million registered advocates, around 950 law schools and approximately 400,000 to 500,000 law students across the country. Every year, approximately 60,000 to 70,000 law graduates join the legal profession in India.* A big question is: Are these fresh law graduates readily employable and can they

provide legal services and solutions to business clients? The answer right now, perhaps, is “No.” There’s an opportunity for law schools and universities in India to reexamine curriculums and make them more business oriented.

* Chairman, Indian Bar Council – in his VISION STATEMENT 2011-2013

Attracting the right legal talent in India

According to Shivaji Rao, a regional general counsel for the APAC-SSA region at John Deere, there is a paradigm shift in the thinking of fresh law graduates. The corporate job is becoming more attractive, appears less stressful and more glamorous vis-à-vis a law firm job in private practice. Getting the right talent in the right chairs is very crucial; therefore the recruitment process plays a very important role.

In his view, the following are imperative to attract legal talent:

- The brand reputation;
- Workplace culture;
- Meaningful work;
- Credible leadership;
- Work-life balance; and
- Pay, benefits and recognition.

It is also important to have a robust onboarding process so that the newly recruited in-house counsel quickly understands the team, clients, business environment, business expectations, services and products of the company.

Developing in-house counsel

It is relevant to have the development action plan (DAP) or continuous learning process (CLR) for each of the in-house counsel within the legal team. The DAP/CLR depends on business needs, coupled with the lawyer’s skill improvement plan. In an ordinary situation, for a fresh law graduate, an initial DAP/CLR would:

- Understand the business and products.
- Evaluate the skill level to support the business and the products.
- Develop communication and soft skills.
- Develop core legal and commercial law related skills in a timely manner.
- Use company sponsored external skill development platforms such as ACC, trade bodies and others.

As fresh recruits gain experience and steadily catch up with the business, they look for stability and career progression within the company every two to three years, and this brings the retention challenge in a growing economy.

Learning and development for in-house counsel in India

Learning and development is a significant tool for recruiting, motivating and establishing an internal talent management. In India, depending on the service and work areas, the in-house community has

an increasing desire to build robust technical, management, leadership and soft skills and — most importantly — to learn how to use them to deliver maximum results.

Focused legal training is dependent on understanding individual skillsets and knowledge, and then developing programmes that suit personal needs. This often means focusing on areas of law that are most relevant to the business and customers' needs, in particular commercial contracting, litigation, competition law, international dealerships/distributorships, sale and purchase and intellectual property.

Organisations that specialise in training in-house lawyers on the latest developments should be used. In addition, quarterly, semi-annual and annual reviews should be conducted to assess progress of an in-house counsel. The review can consist of a meeting for a candid, two-way exchange of views based on the personal development programme (PDP). The PDP asks them to complete short, medium and long-term aspirations and to look critically at their skillsets in order to understand which skills they need to acquire and develop to move to the next level in the careers. Feedback from various sources, including a peer review as well as internal and external customers will show career ambitions, skills and development objectives. This is more evident in the information technology (IT) industry in India that functions in multiple jurisdictions.

Management training for in-house lawyers is important because such skills are ultimately what help to drive the business as at time they are required to manage internal and external counsels, stakeholders as well as customers. In-house lawyers learn a great deal about the mechanics of managing a business, financial performance, customer focus and can share best practice on how to interact with commercial colleagues.

There are tailor-made, specialised training programs that are conducted both in-house and by external trainers or law firms. Developing and redeveloping soft skills and leadership behaviour is crucial for in-house counsel to function successfully and make further progress within the organization as it enhances the ability to negotiate, communicate and make presentations.

An interview with Abhijit Gangadhar Poonja of Edgeverve Legal

WHAT ARE THE GENERAL AND SPECIFIC SKILLSETS YOU LOOK FOR IN A PROSPECTIVE IN-HOUSE COUNSEL?

An in-house counsel must possess three characteristics — the ability to (a) work seamlessly within and outside the organization, (b) dissect each issue into relevant sub-issues, analyse the legal framework applicable to each sub-issue and the larger issue; and (c) implement a solution which negates legal risks and at the same time furthers the organizational interests. We have to play the dual role of an advisor and an enabler to truly justify our seat at the decision making table of the organization.

WHAT IS YOUR HIRING PROCESS?

Assessments are manifold. It first begins with an informal conversation to understand the candidate and their career plan while explaining the organization and its goals. If the intended goals of both parties align, a formal interview process is initiated. This process may involve multiple rounds of written tests concluded with a technical interview with a panel from the legal department. Separately, an HR interview is also conducted to get familiarity into the people aspects of the candidate and

his/her application.

Each candidate displays a sense of uniqueness and individuality that the organization must take into account and factor for when assessing his/her application. Therefore at the outset our interview process is very aligned to the nuances of each candidate and his or her application. Secondly, interviews can be very predictable and candidates need to only understand the pattern to crack the code. Our philosophy is to apply real-world situations in interviews to each candidate and assess how these candidates analyse the situation, apply their legal acumen, interpret the law and finally render legally sound pragmatic advice that negates risk to the organization, but also enables the organization's business objectives.

HOW DO YOU TRAIN IN-HOUSE COUNSEL?

Training programs cannot be theoretical. They must be relevant to the practical difficulties faced by an in-house counsel everyday. At the same time, we also strongly propagate the notion of improving the awareness of the team on developments in the law field in India and globally. Hence the designated practice heads strike a balance between dividing our focus on training programs between transactional learning and core competency learning.

It is a commonly held belief that transactional learning is the best teacher. While that may be true to a large extent, the flaw with transactional learning is that it does not result in all-around development of budding in-house counsel. Transactional training occurs on a daily basis while the formalized training mentioned above occurs either once in a fortnight or monthly.

We also believe in a rotation policy, where junior to midlevel attorneys are assigned to other practices to learn and experience both the practice area and the practice heads' teaching philosophies. However the rotation policy is invoked only when we are confident that the rotation shall not impact business and existing transactions and the attorneys' understanding and knowledge of the existing practice area is not compromised.

DO YOU HAVE ANY TIPS FOR NEW IN-HOUSE COUNSEL?

Young attorneys looking to enter corporate legal departments must focus primarily on improving their domain expertise, be able to practically analyse situations and display quick adaptability to business scenarios while retaining their core function of being a risk advisor. For college students, internships are a great way to get a handle of the above focus areas while not dealing with the pressures an in-house counsel would ordinarily face. In internships the students must identify a mentor and look to this mentor to guide them and instil the above characteristics. Most interns make the mistake of going through their internship being reactive rather than proactive, where the latter will reap more rewards for the student in the long term. Similarly, for young attorneys who are already immersed in the profession, they must adopt a similar approach and look to a mentor who can shape their future. Such mentors can be their practice head or someone more neutral, depending on the comfort levels of the in-house counsel.

Our role as in-house counsel is to advise the organization on all legal matters and negate risks. However, our job is predominantly predicated on the ability to source, analyse and deliver information. Given how information intensive our role appears, to effectively carry out our job and most importantly the accuracy, correctness, completeness, relevance and timeliness of our advice, the ability to leverage and successfully use technology becomes a driving factor. Therefore, we must recognize the fact that we live in a digital and technological world and we must adapt to it quickly for

the betterment of our profession, our career and our organization.

Anish Bhatnagar, head of legal for BT global services for India, Bangladesh and Sri Lanka on hiring.

WHAT ARE THE GENERAL AND SPECIFIC SKILLSETS YOU LOOK FOR IN A PROSPECTIVE IN-HOUSE COUNSEL?

It is essential to look for a prospective in-house counsel that has the right temperament to fit into a role and be flexible. In regards to specific skillsets, it depends on the demand of the role, however, what matters is that he or she needs to be enthusiastic, should have stakeholder management skills, as well as being well-versed in the technical requirements of job.

DO YOU HIRE DIRECTLY FROM LAW SCHOOL?

We adopt a flexible approach, i.e., we hire from practising law firm as well as fresh candidates. At the stage of hiring — considering the key stakeholder he would be serving, we involve relevant people in hiring process, i.e., business colleagues.

WHAT ARE YOUR TRAINING REQUIREMENTS?

We conduct regular in-house training, use external counsels or law firms on specialised topics and for specific requirements, it's on the job training via year-round peer feedback for continuous improvement. Mostly we get trained lawyers depending on the business needs and role assigned, however, based on the experience and exposure of the candidate three to six months is given for training purpose.

ANY TIPS FOR BUDDING IN-HOUSE COUNSEL?

The law education graduates receive in law schools is more about regulatory aspects than understanding the basic principles of corporate lawyering, and they receive no exposure to international commercial contracting. Prospective in-house counsel need to upskill contract law and learn about working across various jurisdictions by examining international case law. It is also important to get specialised and practical training rather than pursuing LLM or academic courses. Financial skills are vital for new law graduates as well.

With growing global business and ever rising outsourcing work from different parts of the world, and considering the rise of various specialised areas and dealing with multiple jurisdictions, legal challenges in India are different because of her environmental and business needs. The current education system in India, like most of the American law schools, does not train them to face real and practical challenges in the business world, and it does not contribute to adaptability or flexibility in international business scenarios. Lack of exposure to international commercial contracting, poor negotiation skills, not understanding the common law principles and poor drafting skills, poor knowledge of legal systems in the world, especially that of Europe and the United States, are some the most crucial areas where Indian law schools could improve.

Retention of in-house counsel

Currently, considering the job market and various avenues available in the corporate world in the Indian subcontinent, retaining in-house legal talent is the most challenging aspect. Some of the frequently used tools that are popular in the industry for *retaining* in-house legal talent are included below.

In-house counsel development initiatives:

- Multiple learning and self-development opportunities within the company and outside the company;
 - Leadership and work culture,
 - Cross border / cross functional projects,
 - In-house counsel exchange programs or international assignments,
 - Gender diversity.
- Timely rewards and recognition; and
- Visibility (to a reasonable extent) regarding career progression.

Challenges in legal talent management

It is important to create a “roadmap for success” for each newly recruited in-house counsel. It should focus on particular skills they need to be successful in the company. They can be great lawyers, but if they are not team players and good communicators, they may not be able to advance their career.

Most general counsel in India use recruiters to fill positions, but they also like to develop a strong network of contacts in the legal community, especially in the corporate environment, and references and recommendations from colleagues.

General counsel in India share best practices for hiring, training and retaining in-house counsel

A general counsel from a major multinational company who requested anonymity stated that his organisation promotes programs of personnel exchange between the legal department and other departments in the organisation that has resulted in stronger relationships between those departments.

For Indian in-house counsel it is crucial to anticipate where problems and issues may arise rather than having to react to potential disputes at short notice. Anticipating problems requires a different way of thinking and this needs to be reflected in their recruitment practices. [As one general counsel said](#), “The people that we recruit are people who have the intellectual capacity not to sit at their desk saying well I’m just law and all I do is this. We need people who engage, want to engage with the reality of the commercial world and try to find ways of creatively solving issues.” Another general counsel agreed, saying that they look for “good, rigorous and independent thinkers, the people who actually are capable of making a challenging assessment of informed, longstanding positions or analysing things in that sort of rigorous cold way that is required for a really, really good lawyer.”

In order to become effective and efficient in-house counsel, budding lawyers must:

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- Engage directly with the senior decision makers in your organisation.
 - Analyse past incidents to anticipate future risks.
 - Communicate with senior decision makers in the commercial language they use.
 - Put your advice squarely in the commercial context.
 - Be adaptable in responding to different regulatory environments.
 - Get expertise into unique areas/specific relevant regulations based on the jurisdiction or geography you work in.
 - Work closely together with those dealing with the risk and governance agenda. Take the time to really understand the business and its risk appetite.
 - Put dispute avoidance before dispute resolution.
 - Don't underestimate the impact cultural differences can have while negotiating.
 - Stay up-to-date with the ways your business uses new technologies.
 - Build relationships across the business and work collaboratively.
 - Spend time embedded in the other parts of the business.
 - Learn to deal with multiple jurisdictions, understand cultural differences and develop commercial and business know-how.
 - Learn about best practices of international contracting, contract management and dispute resolution.
 - Keep abreast of new technological developments, changes in regulations and its impact on your areas of practice.

Gaining expertise and training in specialised areas

Considering the nature of global business and the ever-expanding outsourcing industry in India, there are multi-faced challenges that are unique to India due to its legal environment such as dealing with multiple jurisdictions under customer and vendor contracts. In addition to contract and commercial law, some knowledge of the following areas is very useful.

In-house counsel need to learn tax law

Corporate tax departments are staffed by competent individuals with expertise in key tax matters. However, when a tax department operates entirely independent of corporate counsel, it puts the company at risk. Important tax decisions impact the entire business, and when these decisions are not vetted through corporate counsel, it is like looking through binoculars with one eye.

An effective in-house counsel helps the tax department approach these decisions with a full view of the impact on the business as a whole. In-house counsel are also expected to have knowledge about the tax, especially indirect taxes and their implications while dealing with commercial contracts, due diligence, joint venture or M&A activity.

In India, there are special tax provisions based on the nature of the company and where they are set up, e.g., the government provides taxes like income, sales or service tax and duty exemptions, as well as certain export incentives for units set up in Export Processing Zones, Software Technology Park, Electronic Hardware Technology Park, Free Trade Zone and Special Economic Zones and added benefits of income tax holidays, etc. In cases of cross border joint ventures and the acquisition of companies, there are various tax implications and regulatory compliance issues to consider — like

taking approvals of Reserve Bank of India (RBI), Stock Exchange Board of India (SEBI), and the Foreign Investment Promotion Board — based on the equity share and category of industry implications of the Foreign Exchange Regulation Act. Under the international commercial contracts, the in-house counsel should have working knowledge of the tax issues especially related to value-added tax and withholding tax as may be applicable.

In-house counsel need to address tax issues early in any outsourcing arrangements as they may be key to determining the cost effectiveness of the arrangements. Further, any structural solutions will want to be identified early. Where there are any relevant tax risks, the documentation will be essential to apportion who bears the risk and what controls the parties have to ensure that any risk is minimised.

It is extremely important for the lawyers to build, develop and maintain a network of professionals in the areas of tax that affect the company. By doing so, they can help the tax department avoid costly errors and expensive litigation simply by making a timely call to a trusted adviser.

Labour and employment laws

This is another area where in-house counsel need to get well updated and trained, especially those who are supporting internal functions or are part of the advisory role. They would typically come across various issues related employment regulations in various countries like deputation, secondment, right to hire and local employment regulations.

Since companies in the Indian subcontinent are largely doing cross border transactions, the first challenge is to ascertain what the employment laws are. Compliance laws regarding labour and immigration need to address both hiring and firing and the subsequent impacts. Labour regulations in African and Middle Eastern countries are quite different than employment laws in America, Europe or India considering the historical, cultural and geographical factors in addition to the factor of localization (e.g., Emiratisation/Bahrainisation) regulation for employing nationals.

Indian in-house counsel working in the UK region have to be aware of the Transfer Undertakings & Protection of Employees, which largely impacts the outsourcing business. They should understand the issues of hiring rights vis-à-vis nonsolicitation or restrictive covenants and become familiar with body shopping models and their impact from an employment perspective.

Investment and property related regulations

Property related matters involve lot of compliance regulation. including liaison with SEBI, RBI and other related special agencies concerned with the transactions. Most of the in-house counsel are not well aware or are well trained in dealing with property matters like lease, leave and license, sale of property or any investment/funding related projects.

Region specific regulations

There are many country or geography specific regulations the concerned in-house counsel in India need to be aware of, trained and updated on, while doing business or investing in South Africa. In-house counsel need to be fully familiar with the compliance requirements of Broad-Based Black Economic Empowerment.

If the in-house counsel is responsible for the US region, he needs to be well aware of regulations like Export Control Regulations, the Foreign Corrupt Practices Act, the Health Insurance Portability and Accountability Act — which includes privacy and security rules related to health-related data — and regulatory compliance standards such as the Payment Application Data Security Standard, the Gramm-Leach-Bliley Act, and The Sarbanes-Oxley Act of 2002, which requires organizations to monitor their network in real-time, ensure high levels of security for their confidential enterprise assets and provide network compliance audit reports to auditors when demanded.

Moreover, if the in-house counsel is working in Europe, he must be aware about the European Union Data Protection Directive and local data protection laws.

It is critical for organizations to observe the regulatory compliance and audit guidelines for data privacy and security since being non-compliant to the regulatory standards can result in severe penalties.

Understanding the intricacies of intellectual property rights: Ownership, licensing, transfer and related obligations

This is a critical area where most new in-house counsel are not aware of the various concepts and related issues and obligations of ownership of intellectual property rights (IPR), their licensing, product license from OEM, and transfer of title and risks in IPR. The concept of “work for hire,” present in countries like the United States, is not applicable in other countries. Challenges include the obligations of providing appropriate warranties or indemnities and liabilities based on other party’s demands or rights.

Using contract management to boost the bottom line

In today’s competitive market, the most important step for an Indian in-house counsel is to manage legal risks proactively. Moreover, it is to actively partake in the initial phase of the dispute and attempt to negotiate or come to an amicable settlement and minimize the damage and commercial exposure.

Currently, in most of the corporate legal departments, contract lifecycle management is manual, slow, inefficient and ineffective due to a lack of specialists. Yet, there is sufficient automated technology for contract management. The general counsel interviewed for this article expressed concern about their company’s contract management procedures and how this area is still not fully explored and managed effectively. Legal departments must identify smart in-house counsel during recruitment and train them to operate smarter through strategic initiatives that cover cost management, client service and information governance, particularly contract lifecycle management.

Legal departments at large multinationals are having separate divisions to take care of contracts executed. At a practical level, you can’t just write the contract and then hand it over and forget about it. In respect of the contract management, what we have found, particularly with larger customer contracts, is that once it’s signed, the lawyer needs to invest time in training up the team who actually operates the contract. As a company, you are required to increasingly investing in training people. This is outside of legal, on what the key issues are, on how best to manage a complex contract, not letting things fester and then become a big problem, escalating appropriately and really knowing what the contract says which is very important.

Dispute resolution: Litigation and arbitration

Most organisations in India rely on external counsel or law firms to handle their end-to end litigation or arbitration matters. It is very crucial for in-house counsel to be familiar with legal proceedings and develop skills brief external counsel, provide required documentation and relevant information, and understand matters thoroughly. Since most in-house counsel in the Indian subcontinent deal with multiple jurisdictions and are mostly unfamiliar with overseas court systems, they need to know various international arbitration forums to be chosen based on the location and convenience of the parties. The in-house counsel not only needs to be aware about the commercial arbitration acts like 1996's Arbitration and Conciliation Act of India, international arbitration awards and forums like the London Court of International Arbitration, Singapore International Arbitration Centre, International Chamber of Commerce, American Arbitration Association and arbitration under UNICITRAL and JAMS International but also need to understand applicable laws, relevant rules of arbitration and convenient venue and jurisdiction chosen to handle and manage disputes in arbitration efficiently and cost effective manner.

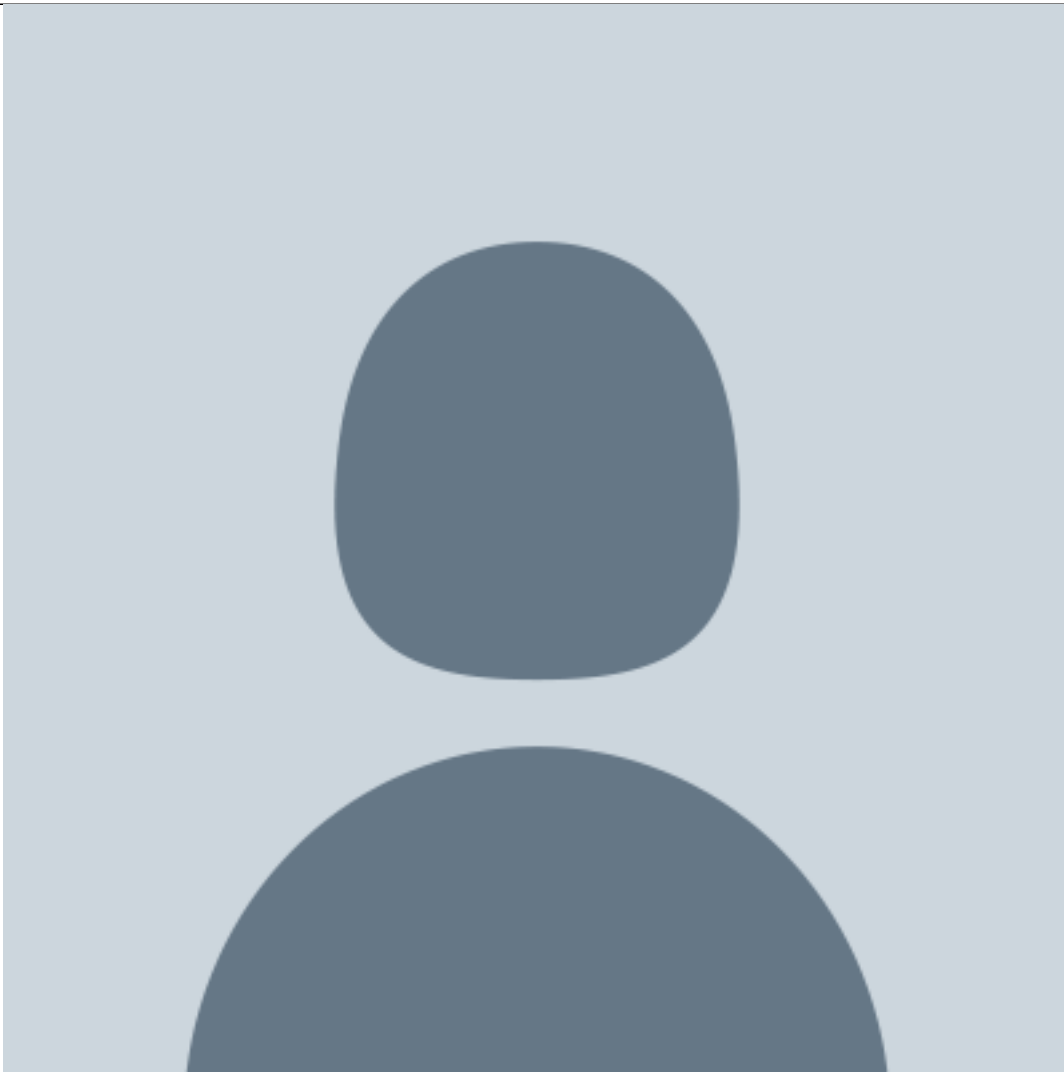
Conclusion

General counsel of multinational companies operating in India feel that the complexity of current data protection and privacy rules are an imminent and significant factor for the prospective in-house counsel. A major concern is the fact that data could be held in various jurisdictions, each with its own national data protection and privacy rules.

Having good local counsel who know the regulations and understand the actual environment is also critical. This demonstrates the importance of building local knowledge and information into global risk analysis. Local advice is important in gaining a full understanding of the regulatory context in each jurisdiction and finding the most effective way to embed compliance, which is typically not taught in the law schools.

In the next five years, the legal department's influence over other departments is expected to grow. In-house counsel will need to have more acumen around new policies or products. For the budding in-house counsel, in addition to have necessary legal analytical skills, certainly, he or she will need to have a good grasp of numbers. They need to develop the right attitude and temperament to break the internal barriers in order to be comfortable negotiating on behalf of the company. Adopting the right approach helps the in-house legal team become more integrated into the business and to develop deeper insights and understanding of the issues faced by different parts of the business.

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