

How In-house Counsel Can Help Navigate a Banking Crisis

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Whether facilitating financing, evaluating vendor relationships, or advising leadership on new risks, in-house attorneys can play a vital role in helping their organizations navigate the banking crisis whose effects rippled beyond the US market.

The March collapse of Silicon Valley Bank (SVB), which had about US$210 billion in assets, left many organizations scrambling to keep pace with fast-moving developments.

Just days after SVB's failure, Signature Bank, with about US$110 billion in assets, also closed, causing further unease about the stability of the financial system. And turmoil in the banking sector continued this month after US regulators seized California-based First Republic Bank.

The fallout has left many organizations calling upon their in-house legal counsel to get to the bottom of core issues and advise them on next steps.

"There was definitely a sense of panic for several days while a lot of uncertainty was in the air, and many company employees look to in-house counsel for guidance and leadership during a time of potential crisis," Shane Mulrooney, general counsel of New Era ADR, said. In-house counsel must be "transparent and reassuring at the same time in any communication to the rest of the company," he affirmed.

Here are some takeaways on how in-house attorneys can help their organization grapple with the ongoing disruption to the financial sector.

Stay calm and develop a plan

The best advice for in-house counsel is “don’t panic,” James Goepel, general counsel and director of education and content at FutureFeed, said.

FutureFeed, a startup that provides cybersecurity compliance solutions, opened an account with Silicon Valley Bank shortly before the run that caused the bank’s collapse.

Goepel said his organization stayed informed of related developments and created a plan to deal with the bank’s collapse. FutureFeed, ultimately, didn’t see a significant disruption to its business from the bank failure, he said. The company also decided to continue its relationship with Silicon Valley Bank after federal regulators took actions in response to the banking crisis.

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Those actions included the US Treasury Department, Federal Reserve, and Federal Deposit Insurance Corporation ensuring that accounts at the two failed banks would be backstopped beyond the US$250,000 limit on federally insured deposits. The Federal Reserve also created the Bank Term Funding Program (BTFP), a lender of last resort to help cash-strapped banks cover their deposits.

The implications could have been worse, but most startups and small businesses were able to weather the storm, Goepel said.

Similarly, other in-house attorneys said in-house counsel must keep up with related developments and provide a calming influence for their organization.

> "In addition to the standard role counsel can play in facilitating finance and leadership in whatever they need to secure company finances — rapid response time, introductions to new banking relationships, etc. — in-house attorneys at every level should make sure they are fully informed on all new developments as they progress to appropriately reassure other employees and maintain calm throughout the company."
>
> Shane Mulrooney

Understand your company’s risk profile

In-house attorneys also stressed the importance of understanding their organization’s risk profile.

“More than ever, in-house counsel have a critical role to play in enterprise risk identification and management,” Rebecca Kronlund, general counsel at Stearns Bank, said. “Every in-house attorney needs to understand their company’s risk profile, which includes vulnerabilities of your strategic partners.”



In-house can be invaluable partners in mitigating financial risk. Artwork by catshila / *Shutterstock.com*

“Once you understand those vulnerabilities, you can more effectively mitigate risk including through contract negotiation,” she said.

In-house counsel must be able to read through their organization’s balance sheet as part of evaluating their risks.

“As we learned from the recent bank failures, poor investments may be lurking as significant unrealized losses,” she said.

“Understand your company’s retained earnings — is there a cushion for hard times ahead?” she asked. “This type of financial acumen will enable in-house counsel to participate and provide guidance around the financial discipline that is needed to weather the ups and downs in your business.”

Evaluate your vendors (including banks)

The crisis has also caused many organizations to reevaluate their relationships with vendors, including banks.

“Every company has a bank relationship at its epicenter which provides access to credit, the ability to send and receive money, and make payroll,” Kronlund said. “A key takeaway from the recent bank failures is to do basic due diligence on your bank, like you would any other strategic partner to your

company," she added.

Most bank financial information is public, which provides organizations with a way to keep tabs on their financial stability. However, from a practical standpoint, many in-house attorneys may find it difficult to parse through a bank's balance sheet while also helping their organization run its business.

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There are some key metrics in-house counsel can pay close attention to when reviewing whether their banks are financially sound. "One key metric to know is your bank's tangible common equity which will capture capital, exposure to unrealized losses and strength of earnings," Kronlund said.

Meanwhile, companies are also assessing their relationship with other vendors who may have been affected by the bank failures. "Gaining a solid understanding on the implications of potential fallout to any key vendors or customers is important as events unfold, particularly if there is still a lot of uncertainty in the air," Mulrooney said.

However, Mulrooney cautioned that attorneys must be mindful of the fact that vendors are also trying to manage the events on their own. "Securing your company's risk is of course standard for in-house counsel, but not at the expense of key relationships that have a much broader impact on the business," he added.

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