

When Do You Really Need the Expense of a Law Firm?

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Adopting an Agile Approach to Legal Resourcing During an Inflationary Economy

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Do you really need the (growing) expense of a law firm? The answer is – of course you do. Elite law firms will always have a place in the legal resourcing ecosystem. The right question to ask, however is: When do you really need that law firm?

Given the way world events are unfolding, now is the time for legal leaders to intensify their efforts to hedge against inflation by rethinking the traditional legal paradigm – and this means taking a hard look at their approach to anticipating and identifying risks and mapping related legal matters to the most appropriate legal resources.

The Impact of Macro Issues

Today, evolving macro issues are challenging the role of in-house counsel.

Risks are proliferating: Turmoil in world politics, ongoing repercussions from the pandemic, the Great Resignation, the looming energy crisis, and unprecedented inflation – which recently reached its fastest 12-month pace in nearly 40 years – are just some of the factors contributing a perfect storm of enterprise jeopardy which legal departments must navigate. Commercial leaders, already dealing with a pandemic-induced volatile economy and a disrupted supply chain, are struggling to keep costs in check to maintain profit.

The marketplace is less forgiving: Stakeholder expectations are changing rapidly and there is even less tolerance for

companies that cannot effectively withstand increased scrutiny around DE&I practices, ESG, privacy, security, and heightened consumer advocacy. Reputational risk carries far more weight and its impact is longer-lasting than ever before.

The role of legal is expanding: Particularly in the post-pandemic environment, and after a year of social unrest and global turmoil, legal departments have had to be more responsive to external circumstances, volatility, and related internal shifts in priorities and strategies. Meanwhile, product development cycles are accelerating and corporate strategies are evolving more rapidly. The need for legal teams to act with speed and agility has never been greater. This is good news, perhaps, for GCs who (rightfully) believe they have critical insights to contribute as a partner and counselor to the C-suite – but with that enhanced role comes increased implications for the legal department. Legal now becomes far more accountable for advocating, driving, and navigating the corporate response to emerging risks and market opportunities.

GCs are all too aware of how their role is expanding. Seventy-nine percent of respondents to a recent survey of 220 GCs at companies with \$250m+ in annual revenue say they believe they must serve as the conscience of the company, and 64% believe that role is more important today than it's ever been. GCs are also conscious of how much harder their job is in a COVID-influenced environment, with 85% (unsurprisingly) reporting that the pandemic made their job more difficult.

The pressure on GCs to cut costs is mounting: Even before the pandemic, 74% of in-house legal executives cited cost control as a top priority, according to a 2020 Consero Report. A 2021 EY Law and Harvard Law School survey, which interviewed more than 2,000 GCs, found that 88% of GCs anticipated substantial budget cuts. CEOs of companies with more than \$20 billion in annual revenue were expected to require legal departments to reduce costs by 18%, despite ballooning work volumes and emerging legal risks.

The Deficiencies of the Traditional Model for Legal Resourcing
It's a new environment in which the old "staff up or send out" model is no longer adequate, not only because budgets are shrinking, but also because the legacy legal resourcing model lacks the agility to address accelerating risks. In this model, the in-house team handles an ongoing stream of enterprise legal work, which normally requires some level of institutional knowledge and should support the broader strategic priorities of the company. External law firms form the second piece of the puzzle. They are critical for large-scale litigation, for understanding and benchmarking marketplace norms, and for exceptional matters that are beyond the abilities and scale of even the most robust internal team (more on this later).

Addressing enterprise needs in this model is expensive and partly ineffective. The in-house team is a fixed cost, so GCs ideally need to avoid staffing up for matters that turn out to be transient. But because it is difficult to anticipate future risk, especially in the current business environment, GCs are forced to hire for tomorrow's needs based on yesterday's issues, creating an inherent misalignment. Ideally the core team could follow the Goldilocks paradigm of being perfectly right-sized: big enough to focus on essential issues, lean enough to control for costs and hedge against the underutilization of specialists, but sufficiently agile to add resources as workflow and matters evolve. But it rarely works out that way.

The second element of the traditional model is even costlier costly. Big Law firms are inherently expensive and getting more so: In 2020, we saw an aggregate rate increase of 5% for their services. The pandemic years have been good for law firms. Beyond cost, however, law firms must be educated about the critical context of the legal matters for which they are engaged, which adds both to the cost and management time required to bring them up to speed. They also often lack the

unique experience of in-house lawyers in building practical solutions that can be operationally carried out throughout the organization.

Legal leaders can adapt, survive, and thrive only by rethinking the traditional legal paradigm. What does that mean? It means taking a new approach to anticipating and identifying risks and mapping related legal matters to the most appropriate legal resources.

The Missing Leg

Like a two-legged stool, the traditional model lacks a stabilizing element to help absorb risk and balance the distribution of legal matters. That missing piece, the third leg of the stool, is an agile layer of flexible talent or “virtual bench” that sits between the in-house team and the law firm, allowing the legal department to combine the legal expertise of Big Law and company-specific institutional knowledge in new ways. In this model, which we call Core-Bench-Firm or CBF, the core team is composed of a lean full-time team of legal lieutenants who leverage internal enterprise knowledge, provide appropriate managerial scale and handle core competency work. That core team is then supported, almost entirely, by a bench of trusted, on-demand lawyers for expertise aligned to emerging risks, workload surges, and law firm management.

Creating a CBF model that incorporates a layer of agile talent reduces the addiction to law firms by limiting their involvement to a need-based model. Instead of leveraging law firms because the in-house team is simply too busy, or not well-versed enough in the specialty, a CBF model funnels legal matters through a process that confines law firm engagement to exceptional events, like navigating during the pandemic and new benchmarking needs; or provides a mechanism for more finely focusing how and when, during the course of a legal matter, external firms get called upon for counsel. Herein lies one of the hidden values of the agile layer. In the old

paradigm, everything that can't be staffed internally gets sent out to law firms from the start. In this new model, expertise from the bench is tasked with handling the matter. That agile lawyer (or lawyers) can often handle the issue entirely – but that is not the only value he or she brings. Sometimes that lawyer can handle a matter through near completion, but then understands the needs and nuances requiring specific law firm expertise. That latter-stage and more finely tuned conversation with a law firm is far more informed, focused and valuable than it would have otherwise been from the start, which means lower costs and less managerial burden because the agile lawyer is participating in the law firm education process.

This CBF approach to legal resourcing minimizes expensive law firm spend while simultaneously reducing the fixed costs of permanent headcount, especially as legal departments find themselves affected by an inflationary economy and more short-staffed than ever.

This doesn't just control costs; it provides the legal department with better value for every budgeted dollar. Instead of expensive external outside counsel, an in-house generalist not well-versed in the matter, or an underutilized specialist, that bucket of legal spend can be re-deployed and divided among a curated bench of on-demand lawyers, based on needs and risks in the moment. Not only does it provide more value and managerial scale, but it also optimizes risk management by ensuring the right talent is matched to the right legal matter at the right time.

It's Time to Change the Paradigm

Identifying the right legal resource is no longer a binary choice between the two expensive options of staffing up (internally) or sending out (to an external law firm). Today, the right legal resource – particularly in an inflationary market where cost mitigation is paramount – is often a third option: agile legal talent. Instead of hiring a single on-

demand lawyer for overflow work, forward-looking GCs are building a virtual bench of “always-on” flexible talent, trained to understand the business and the strategic objectives of the organization, that sits between the in-house team and the firm, combining Big Law-level expertise with in-house acumen.

The agile virtual bench helps the internal team achieve four critical objectives:

1. It improves risk mitigation by matching legal matters to the right legal talent on an as-needed basis
2. It extends in-house expertise, thereby limiting how much and how often work needs to be sent to a law firm
3. It decreases costs by minimizing law firm spend and in-house hires
4. It reduces the burden on in-house counsel by providing practical, business-focused oversight to teams tasked with managing an increasing number of law firms.

A 5-Step CBF Blueprint

Critically, the virtual bench must be curated, built, and onboarded before specific needs arise, and its nature will be dictated the subject matter expertise that’s required to address specific anticipated risks. The objective is to create a standby team with a base of institutional knowledge that’s ready to ramp up at any time. This bench can be supplemented by additional lawyers as work requires or unexpected risks emerge.

There are 5 key steps for building that virtual bench:

1. Identify and understand the enterprise’s key priorities to ensure that the legal department’s resourcing strategies support core business goals.
2. Assess enterprise-specific core legal talent requirements.
3. Implement a hiring freeze on full-time lawyers to free up budget.

4. Partner with HR to assess the skills and expertise available within the current team and where critical gaps exist.

5. Build the bench by:

- Identifying skill sets required to address anticipated work volume and risk in the near future
- Selecting an agile legal talent provider to curate the required bench of lawyers
- Documenting institutional information to ease onboarding, and
- Continuing to expand the bench over time.

The benefits of CBF are not just financial; the agile bench helps the legal team in many less obvious, but meaningful, ways. For example, agile talent can be used to help create better legal outcomes in coordination with law firms. Agile talent can be used in M&A transactions to help support the entire lifecycle of the deal from diligence to integration, or perhaps to handle discrete components of transaction activity (such as contract review and integration) while the law firm addresses the bet-the-company IPO-related filings. The right bench can also help keep day-to-day legal operations running smoothly while the core team focuses temporarily on the timely execution of a high-stakes deal. The possible configurations of in-house, external, and agile talent to address a diverse set of legal problems are virtually limitless.

The important point is that the agile bench is a true but flexible extension of the in-house team, imbued with the required institutional knowledge of the enterprise, but without the fixed costs of full-time employees. For specific projects, that bench can displace law firms entirely. For other matters, the bench can help extend the internal team's ability to address the matter, only then engaging the law firm during the project's latter stages, where their counsel and advice is really required and ready to be acted upon.

Because the CBF model allows hard-pressed legal departments to

gain access to a vetted bench of institutionally knowledgeable lawyers without incurring the costs of hiring full-time talent, it gives those departments unprecedented flexibility and buying power. Given marketplace volatility and the macro risks and trends impacting the modern-day enterprise legal department, this model is quickly becoming a core requirement for today's GC. This is the kind of innovation today's short-staffed legal departments desperately need as they face an inflationary economy, increased market pressures, and a growing list of risks to the enterprise.