

## Reputation Reputation Reputation

*“How in-house counsel can help their employers maintain their corporate credibility.”*

In today's corporate climate, where new corporate scandals are emerging almost every day, the role of the in-house lawyer has never been more important. By giving independent advice, lawyers are uniquely placed to protect and enhance the reputation of the organisations they work for. Nick Marson examines how in-house counsel can play their part in protecting the reputation of their company, their legal department, and of their own personal judgement.

### Introduction

Helping a company to protect its reputation is not a straightforward proposition for any general counsel. While in-house lawyers can play a vital role in protecting a company's reputation with external stakeholders, they can only do so if they themselves – and their specialist outside law firms – enjoy a high level of credibility. In evaluating how best they can protect their employers' reputation, counsel therefore need to address four different reputational issues.

- What kind of reputation does the company they work for enjoy? With its customers? With the business community? With the regulators?
- What kind of reputation does the head of legal, and their legal team, have internally, within the workforce?
- What kind of reputation does a company's in-house department have in the wider legal market?
- What kind of reputation do the company's external law firms have in the wider legal marketplace?

### Reputation of the company

In a crowded marketplace, and amidst financial turmoil, a company's reputation is one of its most important assets. How the public, regulators, customers and employees feel about a company will determine whether or not they support it. Feelings about a company's reputation may not be logical, but they do matter. Put crudely, without a loyal customer base, a company's sales and future market share will suffer.

Kevin Roberts, CEO Worldwide of Saatchi & Saatchi, says the most successful brands will be LOVEMARKS for their customers. If a customer is deprived of the opportunity to use a specific brand, they will simply find a replacement. If a customer can no longer access a brand with a LOVEMARK, they will complain. It is this level of customer loyalty that successful companies should aspire to.



For their part, in-house counsel can help protect and enhance a company's reputation, by limiting the risk that it will be exposed to. To do this, they must constantly scan for potential vulnerabilities facing the company, and try to limit its exposure to any new problems that occur.

But corporate counsel can only achieve this objective if they are innovative risk managers, or strategic business partners, who are willing to give the company an ethical "sixth sense". Frankfurt-based Dr Christoph Wolf, executive director, senior counsel, Morgan Stanley Bank AG, sees his main role as "advising the bank on how to transact business in an effective way for its clients that preserves the bank's reputation. It also continues to be important to maintain excellent relationships with one's regulators." The reputation with the regulator will be critical going forward, he says, given the increased financial stakes of governments in banks. Long-serving in-house counsel can also act as the company's "institutional memory". When faced with a reputation challenge, they should investigate whether the company has already faced a similar issue before. What was the outcome? What lessons were learned?

In terms of protecting the company's reputation, deeds often speak as loudly as words. As a company, Shell strongly opposes engaging in bribery anywhere in the world – even if it causes inconvenience for its employees. Netherlands-based Keith Ruddock, General Counsel Exploration and Production at Shell International BV, recalls the time he and some of his colleagues were thrown off their bus – which was then impounded and towed away – in Latin America, because they refused to hand over money to corrupt officials. After spending a couple of hours on the dusty roadside in the middle of nowhere, he joked that: "Perhaps we should have paid them!" The fact that no one on the bus did pay the corrupt officials demonstrates the company's commitment to its values "in the field".

For Shell, a good corporate reputation is of paramount importance, ranking second only to safety. The company realises that, while a strong reputation can take decades to build, it potentially only takes one hostile newspaper headline for its reputation to be severely damaged.

### **Reputation of the legal department internally**

Corporate counsel can play a vital role in protecting their company's reputation. But, in order to be taken seriously, the legal department must itself have an excellent reputation with its own work force. In order to gain credibility with their co-workers, general counsel need to conduct a frank evaluation of their own reputation, and the reputation of their department.

A company's general counsel should therefore consider the following issues:

- How does your organisation's employees see your legal department? What sort of reputation does it have within the business units? Is the legal function seen as an obstacle, or as a provider of solutions? How does the legal department know how it is perceived internally – does it actively seek feedback from its internal clients?
- Is the department's work aligned with the most important needs of the business? Is the department the right size and shape? Should the company have a central legal department, or should it base its legal advisors in business units? No one size fits all. Different businesses have different demands.
- At what level does the legal department have a good reputation, internally? Is it on an administrative or a strategic level? Is the company's general counsel perceived to be a manager or a leader? Do they have the ear of the board?
- How good is the legal department at monitoring and influencing corporate governance? Do you, as general counsel, act as your company's "institutional memory", providing consistency when faced with a reputation challenge? Do the department provide formal training to the board on compliance and ethical matters? How proactive is the department at ensuring that third parties – i.e. partners, agents, distributors and suppliers – are compliant with the company's ethical standards?
- Is the quality of the legal department consistent, internationally? How does the general counsel ensure the quality of the company's lawyers in far-flung locations? How well does the general counsel bring the global legal departments together?
- Is the legal department delivering value for money? Legal departments are becoming more budget-driven as procurement processes are put into place. Is the department making optimal use of external counsel?
- How is the role of general counsel within the company changing? What is driving this change? Is the role changing fast enough? Is it going in the right direction? How can the department gain more influence?

A company's legal department should lead by example, according to Ralph Ybema, a freelance Counsel and President of the Hong Kong Corporate Counsel Association. Mr Ybema feels strongly that in-house lawyers should have a more executive mindset, rather than narrowly focusing on legal compliance. Top in-house counsel should offer the same clarity of leadership that is normally offered by a company's CEO. They should be prepared to stand up for their values, and what they believe is right. They should be willing to "fall on their sword", if necessary.

Justin Connor, General Counsel to Meraas Capital in Dubai, offers his own perspective on how his role has historically been perceived. When working as Director of Legal and Regulatory affairs to the Emirates International Telecommunications, (EITL) - part of Dubai Holding Group - he regarded himself as the "custodian" of the company's Code of Conduct – its internal framework for ethical integrity. Often, Justin felt like a priest in the confessional box – someone who was always ready to listen. He was an impartial ear for all employees to talk to, whenever they faced an ethical dilemma.

Although a company's in-house legal department must try to maintain a good reputation with its entire client base, it must inevitably pay particular consideration to its relationship with the company's senior management.

A perennial question for any general counsel is whether they should sit on a company's main board – thereby involving themselves in the company's top-level decision making process. Conversely, should they continue to play a purely advisory role to the board, as many do now? Some people who advocate general counsel sitting on a company's board believe it will enhance the reputation of the legal function in general, because it shows a willingness to "go beyond a narrow functional role". Others think taking up a board-level position compromises the legal department's ability to offer independent advice because, by doing so, it has a stake in the outcome of the board's decisions.

While it is difficult to identify clear trends about whether or not general counsel are increasingly sitting on corporate boards, JUVÉ, the German Legal Magazine, reports that Siemens now wants its group head of legal to do so. Siemens was recently the subject of a billion-dollar fine, after the company was found to have engaged in bribery to win new contracts. Commenting on the topic of lawyers on the board, Klaus Saffenreuther, a senior Litigator with Linklaters, thinks a company's compliance and legal function should operate as one department – and the head of that department should sit on the company's board.

What do you think?

### **Reputation of the company's legal department in the wider legal market**

To enjoy credibility with their own workforce, a company's legal department must employ lawyers that are credible and competent. But, in order to attract high-quality talent, the legal department must itself have a high-quality reputation. In the war to attract and retain talented people, what reputation does your legal department enjoy in the wider legal market?

When evaluating the reputation of their legal department in the legal market, the general counsel should ask themselves the following questions:

- How does the in-house legal department promote its reputation outside the company, within the legal market? Do representatives of the department speak at conferences or events? Do they write articles in legal or business trade journals?
- When trying to recruit new lawyers, does the department offer salaries that are competitive with those at private practice law firms?

- Does the department have a strategy for retaining its staff, and developing their career paths? How does the department ensure its lawyers are stimulated, challenged and energised? Does it know how to motivate them to do their best work?

Another way a legal department can build its reputation in the legal marketplace is by effectively managing its relationships with its external legal advisors. A legal function that has a reputation for competence in dealing with its external advisors will enjoy an enhanced reputation in general – which in turn will feed through to its ability to recruit talented lawyers. Are they the type of client that law firms love to work for – or do private practice lawyers groan every time their company's name is mentioned? External lawyers are sometimes a valuable recruitment pool for a company's in-house legal team, so their reputation among their external advisors does matter.

With this in mind, a company's general counsel should ask themselves the following questions about their likely reputation with their external law firms:

- How proactive are you in working to develop trusting relationships between your company and your external legal advisors? How deep is the relationship with your external firm – is it based on the relationship between general counsel and relationship partner, or does it permeate between your organisations? How often do you introduce your company's senior business managers to your external law firms?
- How many of your external legal advisors understand what issues are most important to your business? Do you provide them with regular updates on your company's corporate strategies? Do you offer external advisors training in your company's methods and procedures?
- Do you manage your legal spend effectively? Do external law firms know what their budget is for each piece of work?

### **Reputation of the company's external law firms in the legal market**

Rightly or wrongly, people are judged by the company they keep. One of the most important roles of the in-house counsel is to select, and instruct, high-quality private practice law firms. An external law firm that a company enjoys working with will enhance the reputation of the in-house legal counsel who initially selected them. By contrast, a law firm who brings nothing but problems will reflect badly, not only on the firm itself, but also on the in-house lawyer who recommended their use.

When selecting the company's external legal advisors, general counsel must weigh up several different reputational issues:

- Objectively, does the firm have a solid reputation within the legal market for offering practical legal advice? For example, are they ranked highly in the legal directories, or known to be the main legal advisor of respected corporations? Have any of your employees or peers worked with them before? If so, do they rate the quality of these firms' advice? And how do they deliver their advice? Is the advice communicated efficiently and effectively? How client-centric are they?
- How highly should you rate other "reputational factors" relating to your lawyers, other than the quality of the legal advice they offer? For example, do they have a documented Corporate and Social Responsibility programme? How good is their record on diversity in the workplace?

### **Summary**

From the perspective of the in-house legal department, reputation covers many different issues, and affects many different stakeholders. Only by addressing each of these issues in turn can counsel help protect the reputation of their company as a whole, their department, and their choice of advisor. But in today's hostile environment, reputation matters more than ever before. It is therefore an issue that a company's general counsel must address – or suffer the consequences of a poor reputation.

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### **Assess the reputation of your department**

To assess the reputation of your own department, use the in-house counsel "sphere of influence" tool. The tool shows where your department has a solid reputation, and also where more work may be needed.

### **See how you score**

To complete the tool, download the questionnaire, and mark your scores as indicated on the questionnaire. Then, plot your scores on the "sphere of influence" tool

To get an imprint of your current influence, join the dots between the different sections of the tool.

### **What your results mean**

A score in the "pink section" of the sphere suggests your department has a high level of influence. A score in the yellow or red section may suggest that more work is needed. It is possible to have a different reputational score amount different client groups. For example, your department may have a high reputation with the company's internal stakeholders, but the reputation of your external counsel may be poor. If that is the case, you may wish to review your working arrangements with your existing law firm panel, or consider replacing them.