

FEATURE ARTICLE

General counsel should anticipate – not just react to – growing legal demand overseas. But setting up a local or regional legal department can be tough, writes **Philip Hout**.



Foreign affairs

The global nature of modern business presents general counsel with many challenges. Arguably the biggest is how they and the lawyers in their team can effectively manage legal risk in dozens, perhaps hundreds, of jurisdictions and across various time zones?

At some point, their thoughts will turn to expanding the department outside the company's historic base. 'For a corporate legal department it matters when the business in a particular country is heavily regulated or where there are unusual or very different types of legal structure than you are used to,' says Pamela Woldow, a Principal at management consultancy Altman Weil. 'You need to consider the risks that creates and if they start to be significant, that's a tip-off that you need a local presence. There are also some countries that are just much higher risk.'

Revenues are another indicator that it might be time to spread the function overseas. There is no hard and fast rule about how large these need to be, although it is often the case that a decision to build a legal team locally is made after the wave has broken, rather than as it is building up.

Naveen Tuli, Managing Director of recruitment firm Laurence Simons, says he recently met a general counsel who had been charged with setting up a legal function in EMEA (Europe, the Middle East and Africa) from scratch for a US business when it had regional revenues of US\$1.5bn. 'He said that was too late,' Tuli reveals. 'Already at that stage most companies are spending US\$3m on external counsel and there are some serious

cost savings that can be made by setting up a panel and appointing a general counsel who might monitor the costs and use of those firms.'

On that basis, Tuli argues, it makes sense to at least consider expanding the team once the business is generating revenues of US\$500m in a given region. 'At that stage at least US\$1m is typically going out on legal costs each year, if not more.'

Tom Hickey, Assistant General Counsel at Hess Oil & Gas in South East Asia and Co-Chair of the IBA Corporate Counsel Forum, says three factors played a part in its decision to expand the legal department into the region in 2002. These were: a critical mass of transactions and projects requiring hands-on legal advice and face-to-face negotiations; a growing concern that what the company was seeing in terms of legal issues was only the tip of the iceberg; and the value in having legal support 'on hand' and the ability to develop good working relationships with the local management team.

The logic of establishing a function overseas may gradually become compelling – the tricky part is going about it. For instance, who will lead the new function? Do you send someone over from the existing team or do you hire locally?

'For many US companies, there is a comfort factor in sending out an expat,' says Tuli. 'More often than not, these individuals are out there for a two, three, even five year stint, with a view to building up a team ideally of locally qualified lawyers who can take over when they go back.'

The major advantage of sending a lawyer from headquarters is that they know the

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