

## 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

**T**he 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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company and the way it operates. 'It is important to infuse the local legal office with the home office corporate culture,' insists Woldow, adding that this is almost impossible to do if just recruiting someone in a far-flung location. 'As expensive as it is, it saves the company in the long run. It can be very, very expensive to correct mistakes.'

There can be all kinds of ramifications should a local legal department fail to protect the business appropriately, she points out. There may be fines or heavy-duty litigation, not to mention the cost of firing employees and hiring replacements. This can involve the outlay of millions of dollars that might otherwise have been spent elsewhere.

But it is not always possible to find from within your existing talent pool an individual who is both willing and able to make the switch. This is despite the fact that moving overseas can be a fantastic opportunity for a lawyer to broaden their horizons and boost their credentials as a potential general counsel of the future.

In any event, the chances are that they will still be pretty unfamiliar with the local laws, language and business culture. Nor will they have many contacts in legal and government circles.

Hickey at Hess says it took 'a good 12 months' for the expatriate the company sent out to South East Asia to gain an in-depth understanding of the culture, working environment, market potential and jurisdictional challenges in order to develop a blueprint for its department. 'The process has been iterative,' he adds. 'We are still developing our thinking along these lines as we map out development and succession plans and as the business expands and contracts.'

For those with the budgetary flexibility, the ideal route is to establish a team that combines home and local expertise from day one. But in these extremely cost-conscious times, most companies have gone straight for the local hire.

This in turn presents its own problems. One is that the legal recruitment sector, particularly in emerging markets, will not be as developed as in, say, the US and the UK. A successful hiring programme might therefore involve a combination of advertising, contingent recruitment agency, and headhunting to secure the right person.

Tuli adds that when companies are looking for someone to fill a pan-regional role, the best candidate may not necessarily be a local lawyer in the country where the job will be based. 'Clients who happen to be setting up their

headquarters in Germany, for example, will say they want a German lawyer, but more often than not they end up having to look across Europe,' he says. 'Sometimes the best person could be in Madrid, London or Stockholm.'

Many companies will look for a local lawyer who already has experience of working in a multinational environment, ideally in a regional role, as this is seen as a much safer bet. If that experience has been gained in the same industry, so much the better.

'By and large, US businesses opening in Europe insist on people who have worked for the European operations of another US company,' says Tuli. 'Experience of the internal politics of working in the international operations of a company headquartered elsewhere is definitely seen as a plus.'

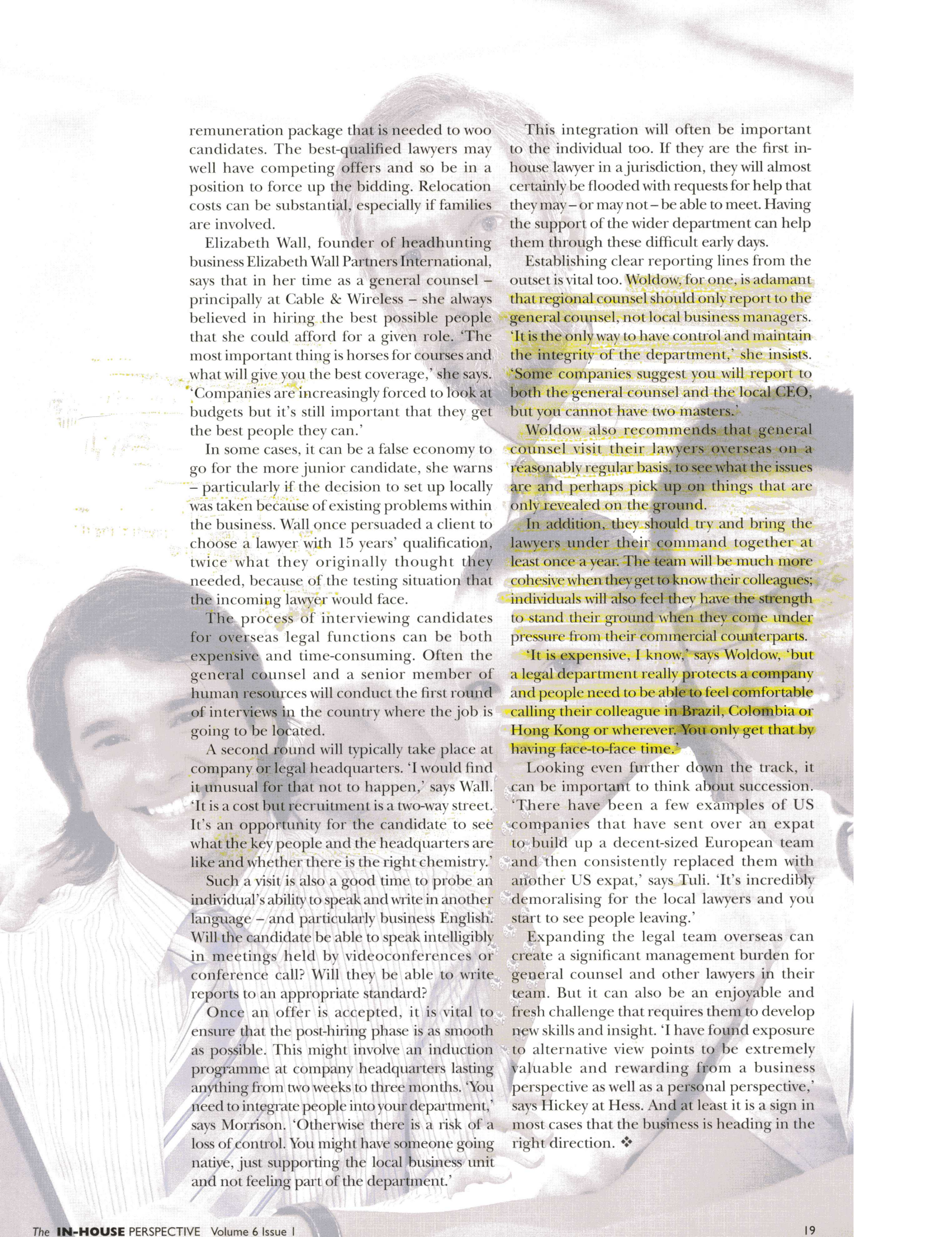
One of the reasons for this is that, although less marked than before, there are still lingering cultural differences in the way in-house lawyers act and, crucially, are expected by their local businesses to act. The transition from private practice to in-house – if you are hiring from a law firm – can also be wider. 'In Europe, you can take a lawyer from a law firm and feel that after a bit of a transition, they will fit right in,' says US management consultant Rees Morrison. 'It's a bigger gap in some jurisdictions.'

In various countries, the head of legal might typically report to the head of administration or finance, rather than to the chief executive. They may also be used to a more passive, less frontline role. 'There are still places – and Asia is probably one of them – where they are less accustomed to the new model of a proactive legal department working hand-in-hand with their business partners,' says Woldow.

One alternative, suggests Morrison, is to ask the company's existing advisers to send one of their lawyers on secondment. These individuals may already have experience of working with the business and might relish the move. And if they enjoy their time, they may want to stay on permanently.

Whilst this may leave the law firm aggrieved, the trade-off could be the prospect of a deeper relationship with a client that has expansion plans. 'It binds the firm and the department much closer,' he points out.

Finding someone who can move smoothly into a country or regional leadership role inevitably comes at a price in terms of the



remuneration package that is needed to woo candidates. The best-qualified lawyers may well have competing offers and so be in a position to force up the bidding. Relocation costs can be substantial, especially if families are involved.

Elizabeth Wall, founder of headhunting business Elizabeth Wall Partners International, says that in her time as a general counsel – principally at Cable & Wireless – she always believed in hiring the best possible people that she could afford for a given role. ‘The most important thing is horses for courses and what will give you the best coverage,’ she says. ‘Companies are increasingly forced to look at budgets but it’s still important that they get the best people they can.’

In some cases, it can be a false economy to go for the more junior candidate, she warns – particularly if the decision to set up locally was taken because of existing problems within the business. Wall once persuaded a client to choose a lawyer with 15 years’ qualification, twice what they originally thought they needed, because of the testing situation that the incoming lawyer would face.

The process of interviewing candidates for overseas legal functions can be both expensive and time-consuming. Often the general counsel and a senior member of human resources will conduct the first round of interviews in the country where the job is going to be located.

A second round will typically take place at company or legal headquarters. ‘I would find it unusual for that not to happen,’ says Wall. ‘It is a cost but recruitment is a two-way street. It’s an opportunity for the candidate to see what the key people and the headquarters are like and whether there is the right chemistry.’

Such a visit is also a good time to probe an individual’s ability to speak and write in another language – and particularly business English. Will the candidate be able to speak intelligibly in meetings held by videoconferences or conference call? Will they be able to write reports to an appropriate standard?

Once an offer is accepted, it is vital to ensure that the post-hiring phase is as smooth as possible. This might involve an induction programme at company headquarters lasting anything from two weeks to three months. ‘You need to integrate people into your department,’ says Morrison. ‘Otherwise there is a risk of a loss of control. You might have someone going native, just supporting the local business unit and not feeling part of the department.’

This integration will often be important to the individual too. If they are the first in-house lawyer in a jurisdiction, they will almost certainly be flooded with requests for help that they may – or may not – be able to meet. Having the support of the wider department can help them through these difficult early days.

Establishing clear reporting lines from the outset is vital too. Woldow, for one, is adamant that regional counsel should only report to the general counsel, not local business managers. ‘It is the only way to have control and maintain the integrity of the department,’ she insists. ‘Some companies suggest you will report to both the general counsel and the local CEO, but you cannot have two masters.’

Woldow also recommends that general counsel visit their lawyers overseas on a reasonably regular basis, to see what the issues are and perhaps pick up on things that are only revealed on the ground.

In addition, they should try and bring the lawyers under their command together at least once a year. The team will be much more cohesive when they get to know their colleagues; individuals will also feel they have the strength to stand their ground when they come under pressure from their commercial counterparts.

‘It is expensive, I know,’ says Woldow, ‘but a legal department really protects a company and people need to be able to feel comfortable calling their colleague in Brazil, Colombia or Hong Kong or wherever. You only get that by having face-to-face time.’

Looking even further down the track, it can be important to think about succession. ‘There have been a few examples of US companies that have sent over an expat to build up a decent-sized European team and then consistently replaced them with another US expat,’ says Tuli. ‘It’s incredibly demoralising for the local lawyers and you start to see people leaving.’

Expanding the legal team overseas can create a significant management burden for general counsel and other lawyers in their team. But it can also be an enjoyable and fresh challenge that requires them to develop new skills and insight. ‘I have found exposure to alternative view points to be extremely valuable and rewarding from a business perspective as well as a personal perspective,’ says Hickey at Hess. And at least it is a sign in most cases that the business is heading in the right direction. ❖