



Is COVID-19 an expensive lesson for businesses or a catalyst for change? The Asia perspective

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Reopening Asia: In-house legal teams leading their business on the way to recovery with resilience and flexibility

2020 has been a challenging year on a number of fronts for many. Although the last quarter of the year is looking promising, businesses and governments across the world are still grappling with the consequences (and the long-term impact) of the coronavirus pandemic.

In Asia in particular, economies are largely expected to be back on the growth trajectory by the end of the year, most notably in countries like China, where companies, businesses and communities are almost back to the pre-COVID 'normal'.

In this dynamic and ever-changing environment, we continue to explore what this means for in-house legal departments and how they are adapting to the post-COVID world. At the end of August, we invited a group of general counsel from our Asia-based clients in the region to join us for a virtual roundtable. This was our second virtual roundtable in the region and we appreciate the lively discussion we had on the current issues, themes, trends and critical areas their legal teams are encountering as a result of the pandemic.

The roundtable was part of a wider 'Reed Smith 2020 across the globe' series designed to create a platform for senior business leaders, general counsel, legal and business teams and senior management representatives to share relevant business experiences, discuss live issues and explore strategic ideas for the future. Through this established programme, we aim to foster a real peer-to-peer learning environment for our clients, to ensure they are able to discuss real and current issues in an informal but informative setting.

Our roundtable events, in their virtual and in-person formats, are held under the Chatham House rule. Therefore, we have not provided specific names or examples in this report and have kept it confined to themes. This report outlines the key themes and some of the key 'now and the next' areas that emerged during the discussion with participants.

As we continue to explore some of the critical issues in-house legal teams are dealing with, we are grateful to the participants for their honesty and candour and we are committed to continuing the dialogue with them as we move into our global 'new normal'.



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Please note: Throughout this report quotes in *"blue italics"* are direct quotes from the session

Theme 1: Countering the crisis – adaptability, flexibility and resilience proving to be essential requirements for business survival and growth

2020 has brought a new spotlight on in-house legal teams. COVID-19 has highlighted the importance for in-house lawyers to become trusted advisors to their management when devising crisis management strategies in the context of a highly imperfect situation and in a dynamic and fast-moving environment.

- More than ever before, the global pandemic has helped to *“raise the profile of in-house counsel”*. Particularly at board and C-suite level, in-house legal teams received *“greater visibility”* and a unique opportunity to take on a *“more strategic advisory role”*.
- In-house legal teams have found themselves at the front line, *“sitting together with the COVID response and crisis teams”*, countering the crisis and assessing its impact on wider business continuity issues, in areas like HR, data protection and cybersecurity.
- Participants commented that their contribution to and involvement in the business was greater than ever before. They have felt increasingly valued and not just called upon *“as firefighters or to approve transactions and negotiations; but we’re here for strategy, business and [an] operational perspective”*.
- At the peak of the crisis, clients found themselves relying on partial and inadequate information and had to *“collect more information and more efficiently and quickly”* in order to keep up *“with this dynamic situation and to make decisions with imperfect information”*.
- In-house counsel have appreciated that in an extraordinary situation like a pandemic, they had to demonstrate more than just technical and legal expertise. As more internal stakeholders turned to legal teams for advice on new business opportunities and legal issues, in-house counsel had to show an incredible level of resilience, in an effort to provide pragmatic and strategic guidance to the business.
- On a more day-to-day operational level, one client admitted to *“missing having [the ability] to chase people out of my office [when necessary]. Now there are 15 email exchanges before a matter goes away, whereas before you could extinguish something quickly and move on.”*

“It has taken a pandemic for the business to realise the real value of legal”



The now and the next

- Clients commented that *“legal teams now have greater visibility”* with internal stakeholders, and during the pandemic, they felt more *“matrixed in, linked in to other departments”*.
- Ultimately, there was a consensus that the pandemic has provided a *“great opportunity for in-house counsel to prove their value and work with external partners”*.
- In-house legal teams now have a better and deeper understanding of the business and feel entrusted with greater responsibilities and purpose, as a result of their direct involvement in helping to provide a more robust business response to the pandemic and in a strategic way. One client commented that *“I sometimes know more about [certain aspects of] the business than my CEO”* and thereby felt that she was quite often better positioned to advise on wider business related issues and that her role evolved into one of becoming a true business adviser.
- Overall, clients expressed the view that this experience was positive in the context of their roles, reflecting that *“it has taken a pandemic for the business to realise the real value of legal”*.
- Looking forward in the post-COVID world, in-house legal teams do not envisage reverting back to a more siloed role, as *“the value of legal has been shown”*, meaning that legal will continue to be an embedded part of the strategic planning and decision making process in the business.



Theme 2: Culture matters – cultural differences as a critical factor when doing business in the midst of a crisis

The diversity of culture, history and economic growth prospects have always made the Asia Pacific region appealing from a business and investment standpoint. However, the coronavirus pandemic has brought about new and unforeseen challenges in the field of inter-cultural connectivity and experiences for in-house legal teams. Clients are now reflecting on the importance of adapting their behaviours and perceptions to the cultural changes they have experienced when doing business globally during the pandemic.

- Clients admitted that communicating predominantly in the virtual environment has created new challenges from the perspective of conducting business internationally, with one client confessing that *“the communication globally between cultures is one of the biggest challenges”*.
- Traditionally, doing business in Asia requires a lot of in-person meetings and interaction in order to help develop a trusted relationship with business partners – particularly in countries like the Philippines and Indonesia, where *“people like to see you in person, to get to know you and get comfortable with you”*. One client shared that usually when doing business with counterparties in these countries, it takes years to develop the trust before closing a deal.
- However, in the heat of the pandemic, a new trend emerged of everyone *“doing deals virtually and through a camera”* and intercultural connectivity and relationships being seen through a different lens.
- The virtual environment has unlocked a new set of challenges, with clients admitting to having seen *“more of the bad behaviours”*, meaning international counterparties felt more at ease to *“make more unreasonable demands that you cannot or would not make in-person”*.
- This has led to *“issues that have been dragged on for months and months and it’s really coming down to not being able to communicate”*, with clients saying this has been a *“major change”* for them.

The now and the next

- Communication has been crucial for global organisations in the heat of the crisis and clients shared that, due to the remote work setting, *“we are actually communicating a lot more”* and that there has been more *“rapid communication”*.
- However, for in-house legal teams, communication in a virtual environment has made them realise the importance of in-person and live meetings, specifically in the context of doing business in Asia because *“it is difficult to gauge people’s true intentions and read between the lines”*.
- Clients admitted to having encountered new forms of behaviour from their international business partners, because of the lack of *“the subtleties, the nuances of communication in Asian-based business relationships”* in a virtual environment. In-house teams have therefore had to address these new challenges in order to help unblock the progress of new and existing transactions and deals.
- The new virtual setting has made in-house legal teams increasingly consider what it takes to do business in Asia in a successful and efficient manner and *“to be able to explain an issue in a way that will get the problem solved, that both sides will understand, with no ambiguity on what’s being discussed”*.

Theme 3: “Engage, engage, engage”

– the impact on the relationships with external counsel

As in-house counsel have seen their visibility and responsibilities grow, their expectations of law firms have also seen a major shift towards more genuine connection and direct engagement. In-house counsel now expect law firms to *“go back to the basics of relationship building”* and approach them on a more human, down-to-earth level.

- As more businesses are facing cost-cutting pressures, clients need law firms to be thinking forward with them and to *“find creative ways to stay ahead to tackle the big rocks”*.
- The increased pressures on and expectations from in-house legal teams have shed a new light on what a trusted partnership with law firms really means for in-house counsel. Clients have grown to expect their external counsel to *“have empathy for the resource-constrained environment that we are operating in”*.
- The unusual circumstances of the pandemic and the related business continuity measures that most clients have had to devise and implement, have made in-house counsel appreciate different types of outreach, such as invitations to industry-focused forums, roundtable discussions or just a simple personal note from their external lawyers, rather than *“endless newsletters”*.
- Staying on the sidelines is not an option if law firms are really invested in building the relationship with their clients in the long run and firms should *“show that you care”* and *“engage, engage, engage”*.



“ We need our external counsel to be on the same page with the way the market is going ”



“ Work with me, not for me ”

The now and the next

- It is widely accepted that the expectations from law firms have changed since the outbreak of the pandemic, with one client stating that *“we need our external counsel to be on the same page with the way the market is going”*.
- Clients are conscious of how external counsel are approaching them in this environment, with one client saying *“I will remember the lawyers who took the extra step vs the lawyers who took the vulture approach”*.
- In-house counsel expect law firms to build *“stickiness with your client”* and see them *“as a person who has particular issues and problems at work”*, rather than focusing on more short-term wins and simply seeing in-house legal teams as *“cash cows”*. Ultimately, clients need law firms to *“work with me, not for me”*.

Theme 4: COVID-19 – using a crisis to drive innovation and business growth

In-house legal teams are still grappling with the consequences of the pandemic and are now considering what to take away from the lessons learned and how to implement new and innovative business models in order to become more agile and resilient in the future. In retrospect, clients consider recovery *“as a given”* and the pandemic is now largely seen as *“an expensive lesson that we should not waste”*.

- When reflecting on how the pandemic impacted their business, clients commented that, in the midst of a crisis, *“the adaptability of the business has proven remarkable”*, meaning that despite the very difficult circumstances, internal teams and colleagues have united to help their organisations get through the storm. One client in particular talked about *“how proud I am of our IT department”*, reflecting on the strength of their IT infrastructure, which enabled their business to continue to operate successfully and globally.
- During the crisis, some clients have seen a positive change in the way their organisations conduct their day-to-day business. For example, one client commented that before the pandemic, *“my company used to spend a lot of money for travelling globally, to buy assets and to make money. Now the business teams are at their desks, not travelling”* – in other words, restrictions on business travel have not inhibited or prevented them from continuing their day-to-day operations or business negotiations.
- Whilst for many companies in Asia *“the aim is to preserve cash”*, clients estimate that *“communication costs have increased a lot”*, meaning that it is more time-consuming and resource-consuming to organise, hold and attend meetings virtually vs an office environment where they can exchange information and ideas more easily and fluidly.
- As companies are now gradually reopening their offices and going back to normal, particularly in China where some clients are *“100% back in the office”*, in-house counsel are considering what the successful working model will be for them in the future.
- Businesses will need to consider new and more innovative business operating models and behaviours, to help balance two key elements of current corporate strategies, i.e., cash preservation and maintaining workforce efficiencies in a new working paradigm.
- On a more granular practice management level, the COVID crisis has also highlighted that in-house legal teams have proven that *“we can probably do more things virtually but not everything”*, meaning that some face-to-face interactions remain crucial, e.g., in-person meetings with clients and regulators.
- On a macro level, clients expect to see more countries focusing on domestic investments, i.e., *“more countries will focus on themselves, rather than doing business globally”*, with one client stating that from the China-investment perspective, they will start focusing more on Africa and South-East Asia.



The now and the next

- In-house legal teams see themselves as a navigating force for change within their organisations, encouraging their internal stakeholders to *“not think how to go back to normal, [because] normal got us here in the first place”* but consider how to move to *“a better situation where we take these lessons learned”*.
- While some of the current COVID restrictions are still an issue from an investment standpoint, e.g., travelling globally, in-house counsel also see the pandemic as an opportunity *“to get rid of some of the bad habits corporations had in the past”* and *“re-think your day-to-day operations”*.
- For some clients, the pandemic has created an opportunity to break into new markets with *“existing tech, existing expertise and existing resources”*, with telemedicine being one example for new business ventures.
- Looking forward, clients believe that *“recovery is a given”*, meaning that it will happen but it is just a matter of time. However, they are now on a quest to devise a new world where we take the *“painful lessons that we can apply when we move into the recovery stage”*.

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