

Future-proofing businesses post COVID-19: The Middle East perspective



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Countering the crisis: a step-by-step approach by in-house counsel

There's no doubt that 2020 has been an extraordinary year on a number of fronts, posing numerous challenges in different regions and jurisdictions. More specifically, in the Middle East, the economic, political and business challenges have been additionally heightened due to the oil price plummeting shortly after the COVID-19 pandemic outbreak back in April.

Now, as economies and businesses in the region begin to gradually return to a degree of normality, in-house legal teams are tasked with mitigating current and future risks enhanced by the pandemic, while also taking steps to reimagine the legal status quo and future-proof their operations. In this dynamic and ever-changing environment, we continue to explore what this means for in-house counsel and how they are adapting to the post-COVID-19 world.

At the beginning of September, we invited a group of general counsel from the Middle East region to join us for a virtual roundtable. This roundtable was part of the Reed Smith 2020 virtual roundtable 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 roundtable 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 pursuant to 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 that emerged from our discussion, and some of the key 'now and the next' areas that seemed to be highlighted during the conversation with our clients.

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 candor, and we will ensure to continue the dialogue with them as we move into our global 'new normal'.



Sachin Kerur

Office Managing Partner, Dubai and Abu Dhabi
+971 (0)4 709 6444
skerur@reedsmith.com

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

Theme 1: Around-the-clock emergency response: partnering with the business to firefight and troubleshoot

In-house counsel in the Middle East admitted to having experienced unprecedented pressures to help provide a practical around-the-clock response to the crisis.

- In-house counsel admitted to having seen their workload significantly increase at the beginning of the COVID-19 outbreak, with some clients sharing that they had worked *“18 to 19 hours per day to firefight and take decisions”*. A time period they described as “unprecedented”.
- Participants acknowledged that in the midst of the crisis, in-house legal teams were tasked to review and weigh in on every decision, contract and issue, including on matters relating to HR and health and safety. Carrying out risk assessments became a high priority, along with ensuring strong communication across teams and departments.
- Clients shared that consistency and coordination among their peers and team members, and with the business overall, were critical to providing meaningful support to their internal stakeholders.
- In-house counsel admitted to having received *“hundreds of force majeure notices with exceptional legal concepts”* and that they had to find different ways to deal with them, with one client saying: *“We had to be creative”*.
- On a more operational level, clients appreciated that technology had allowed them to successfully continue working on a remote basis, but at the same time, they were conscious that *“technology does not always work”*. An additional challenge was the logistical access to more functional technologies, such as printers and photocopiers, which are frequently used in the normal course of business.



The now and the next

- With a retrospective lens, clients were of the view that the beginning of the pandemic had impacted them the hardest, with one client admitting that the pandemic had impacted her on a professional and personal level: *“This situation has also affected us personally. You really have to firefight all the time and make decisions”*.
- Because of the pandemic and the additional challenges caused by the steep oil price drop, in-house counsel received a large number of force majeure claims, *“a lot more than we would normally do”*. This was an unprecedented phenomenon, *“because no one ever paid attention to force majeure clauses and now everyone will pay attention to them”*.
- More than ever, clients experienced their staff collaborate and work together as a team to manage a multitude of issues on a number of fronts, including managing legal, compliance and governance issues.
- Some of the participants discussed the fact that due to the pandemic, they had to implement immediate changes to their 2020 business and strategy plans. For example, one particular organisation was forced to cancel a major flagship event. However, notwithstanding all the turbulence and chaos caused by their decision to cancel, the client reflected on the outcome and subsequently concluded that it was *“a blessing”* as it has provided an opportunity for the business to rethink their involvement in this particular event in the future, its merits and the benefit to their business versus the costs incurred to sponsor the event, etc.

Theme 2: A moment of serenity:

in-house counsel reflecting on the aftermath of the crisis

After the initial ‘emergency response’ phase of the crisis, where quick, pragmatic and business critical decisions needed to be taken, in-house counsel found themselves in a “moment of serenity” where they could spend time analysing the real consequences of the pandemic on their business and their teams.

- For in-house counsel, this was a moment when they could finally take a step back and analyse the situation from a legal and commercial perspective, in order to devise a meaningful step-by-step strategy for the future.
- Clients recognised that they had taken over *“a lot more work that was not legal in nature, for example, commercial, but now we’re going to retreat a little bit”*.
- Reflecting on the overall impact on their industries, clients believed that the pandemic has impacted all organisations to one degree or another.
- While some clients felt that despite this unprecedented crisis, their organisations would continue to be financially stable and that they would quickly bounce back to pre-COVID-19 operational levels, others said that they were in a position of retreat and that *“we’re just waiting for the commercial teams to come up with the new plan [for the future]”*.
- Finally, clients found themselves looking for new ways to deliver legal services to their internal stakeholders, with one client sharing that *“we’re spending a lot of time in legal to upskill people in the business, for example, in negotiations of arrangements, concessions of arrangements, etc.”*.

The now and the next

- In the immediate aftermath of the pandemic, in-house counsel had the opportunity *“to take a step back and address things with a lot more serenity”*.
- Participants appreciated that they had faced some additional challenges within their teams, for example, *“there have been some resource cuts in the organisation – human resources, availability of budgets and external consultants”*.
- Some clients were moved to a new reduced working week arrangement until the end of the year, so they were conscious that *“time allocation has to be looked at very carefully”*.
- Clients acknowledged that because of these new working parameters, *“the edges [between our work and our personal lives] have been blurred a little bit as there is a constant stream of requests that come in, any day, any time”*. This has led to additional pressure on in-house counsel, even though the initial firefighting phase of the pandemic has been dealt with.
- However, there was also a general *“sense of [being back to] normality”*, due to the fact that most organisations in the Middle East have now gone back to the office. Consequently, there was a general sense of recognising the importance of being among colleagues in an office environment, which helps to keep a healthy balance between work and private lives.



Following the initial phase of the pandemic, clients felt that **“ things were calming in terms of intensity. We fought the fire and the intensity of the situation was dealt with. ”**



Theme 3: Troubleshooting to transformation: in-house counsel designing the future through the legal lens

Clients generally remained optimistic about the future. They are now reflecting on the importance of challenging the legal status quo in a positive way and are focusing on designing and implementing new innovative working models with a view to future-proofing their businesses.

- Clients recognised that they were still grappling with the consequences of the pandemic and that the challenge is that the problems [economic and otherwise] have no end in sight, with one client saying: *“There’s a lot of stress and ugliness that is happening”*.
- In some industries, clients predicted that the pandemic would bring a real shake up to the existing working paradigm in the long-run, with one client sharing that *“the stress [on our industry] is going to continue for years before we get to 2019 levels of the business”*. For example, in the aviation sector, clients discussed that they expect to see *“a lot of consolidation. Some airlines have gone for some form of state aid, while some have gone into restructuring and insolvency proceedings”*.
- For other organisations, clients admitted that they would have to *“do a lot more with a lot less [in terms of resources]”* and that they were planning to *“go back to the drawing board to think how we can change”* in a way that would help them transform their operating model to help their business.
- It was acknowledged that flexibility and agility would be critical in this quest for innovation. For example, one client shared that they were aspiring to change the focus of their business from the existing real estate focus to a more innovation- and technology-focused standpoint.



“The stress [on our industry] is going to continue for years before we get to 2019 levels of the business.”



The now and the next

- As the pandemic progressed, in-house counsel recognised incredible opportunities for transformation and change in the future: *“We need to look at the strategy and change direction of what we were doing previously”*.
- Clients predicted that the hard-learnt lessons of the pandemic won't be forgotten and that *“force majeure, partial suspension of business, pre-payments clauses – going forward we expect people to be invoking these for global or regional outbreaks a lot more”*.
- In-house counsel also predicted that *“the next thing won't be a pandemic but it will be something else”*, so they were on a quest to 'design' the desired changes through the practice of law: *“It's going to be a very interesting time in the legal profession as to how you can change and shape these risks going forward”*.
- Among clients, there was a shared feeling of optimism and an acknowledgement that *“this is a once in a life time opportunity to embrace change, to embrace restructuring, and to find out what was not working and make it work”*.

“It's going to be a very interesting time in the legal profession as to how you can change and shape these risks going forward.”

Theme 4: People development: investing in the legal talent of the future

In-house counsel are increasingly mindful of the human and people development aspects as one of the direct consequences of the pandemic, and the resulting impact on businesses. They recognised that while remote working proved to be very successful in the midst of the crisis, in other areas of people development, like training, mentoring and fostering talent, clients recognised the challenges that lie ahead.

- Clients were mindful of how the pandemic impacted their people and their teams, particularly more junior team members.
- There was unanimous consensus that recruitment would be difficult in the short and mid term, because *“budgets are tight and the justifications for the case of recruitment will need to be more robust”*.
- There was also a shared feeling of consciousness and awareness that training, mentoring and providing more tangible overall support to colleagues and team members was a lot more difficult to provide in a remote work setting, because there is no real opportunity to operate the usual *“open door/open desk”* policy.
- Clients felt that for junior lawyers in particular, mentoring and teaching critical skills outside of the core technical elements of the law was crucial. ‘Soft’ skills, like how to manage meetings, punctuality, relationship development and networking, among other things, were critical to the development of young talent (for their own career development), but *“it is difficult to provide this mentoring support to young lawyers when we are all working remotely”*.
- On the flip side, it was also recognised that millennials and generation Z lawyers might not necessarily see this as an obstacle to their professional development, as they have been brought up in different times, and being in a virtual environment comes a lot more naturally to them, so *“we need to think of ways that we can meet each other in the middle.”*



The now and the next

- Clients expressed the view that while moving to a remote work setting had required a significant shift in thinking and approach for some organisations, from the perspective of people management and performance evaluation, the impact might be a lot more long-term and real.
- In this context, clients discussed the importance of the role of law firms and them helping in-house counsel with their training needs: *“Training will be challenging; we don’t have budgets for training”*.
- On a more positive note, clients expressed the view that remote work would allow them to recruit *“anyone, anywhere”*, meaning that talent can be recruited not only where an organisation’s offices are based, but anywhere in the world, which provides a certain level of flexibility that did not exist before.
- In this same context, one client also said that they had now become more flexible when accepting secondees from anywhere in the world (subject to time zones) as the secondees did not necessarily need to be located at their office and could work from their home country.



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Phone: +44 (0)20 3116 3000

Fax: +44 (0)20 3116 3999

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