

General Counsel of the Bank as a Knowledge Driver

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Agenda

Traditional Set up

New Age Banking

Structured Products / Derivatives / Securitization etc.

Increased capital market activities

Product and Process Developments within the Bank

Private Sector Banks entrusted with Government business

Compliance and Operations

Overseas Branches and Cross Border Transactions

Overseas Capital Raising Through Novel Instruments

HR initiatives of the Bank

IT and IPRs issues

GCs Role to be valued by Business

Legal Expertise vs Commercial Understanding

GCs - Quality of Life

- ❑ Brief discussion on the traditional role and expectations of the in-house legal counsel.
- ❑ Delving into the impact of new-age banking on the role and expectations of the in-house legal counsel today.
- ❑ Determination of the present role/responsibilities of the in-house legal counsel.

Traditional Set up

In the traditional set up, the profile of a law department in a bank would basically consist of the following activities-

- ❑ advising business departments on security creation for loans and advances, verifying title of property based on advocates reports
- ❑ vetting selected documents referred to the department.
- ❑ Preparation of the bank's standard documentation
- ❑ vetting documents of property acquisitions and leased properties of the bank.
- ❑ advising on claims / litigation by customers or other parties against the bank.
- ❑ the recovery activities of the law department were limited to filing of civil suits as there were no other modes of recovery.
- ❑ Liaising with external legal counsels.

- ❑ Growth of the financial sector.
- ❑ The need to widen the range of financial services that could be offered to the customers under one roof.
- ❑ Omnibus Section 6(1)(o) of the BR Act.
- ❑ Specialist fields like private equity, insurance and mutual funds.
- ❑ More aggressive business departments.
- ❑ Aforesaid factors, inter alia, have led to increased involvement and reliance on in-house legal counsel - starting right from the aspect of a possible board proposal - to the point of inking the deal - and the kick off for the business.
- ❑ Reduction of outsourcing of legal functions- has led to huge cost savings for the Bank on legal advisory services and fast turn around times.
- ❑ Increased involvement of the in-house legal counsel also helps keeps a check on pan-bank activity.

- ❑ The hunger for innovative and exotic products in global financial markets.
- ❑ Sale of NPAs, structured deposits, derivatives and such other permissible novel products and transactions by the regulator.
- ❑ Need for the in-house counsel to delve into the commercial understanding behind each and every deal as well as the technicalities of the same so as to appropriately advise the dealers of the Banks who structure such products or participate by investing into such products devised by other market players.

Increased capital market activities

- ❑ Banks are today involved in capital market exposures to the maximum extent permitted by RBI.
- ❑ This further requires constant touch with the ever changing legal and regulatory regime governing capital markets and the corporate laws as any slight violation would invite the wrath of the regulator and cause loss of reputation for the bank.
- ❑ Advising the Board and management of the various permitted capital market activities.

Product and Process Developments within the Bank

(e.g. novel retail products)

- ❑ Indian banks have come up with many novel products to woo the retail customers.
- ❑ The in-house legal counsel are duty bound to ensure that RBI directives/banking norms are not violated.
- ❑ Needless to point out , none of the new products proposed by the Banks are passed without routing them through the in house-legal counsel besides compliance, finance and risk departments.

Private Sector Banks entrusted with Government business - need of pragmatic outlook by the in-house counsel

- ❑ Government - dual role of a regulator as well as competitor.
- ❑ net banking , bill payments, and also setting up strategic e-projects for state governments for cash management.
- ❑ Practical issue - Can banks bargain with the government as a businessman?
- ❑ the in house legal counsel does have to appraise the business departments about the legal risks in the terms and conditions stipulated by the government entities.

- ❑ This bank function forms the core business of the various business engaged in by a financial conglomerate bank in India today.
- ❑ Legal , compliance and banking operations virtually inseparable. The role of in-house legal counsel is ensuring that all such operations are within the permitted legal and regulatory regime.
- ❑ Impact of new legislations such as RTI and increased awareness of retails customers have led to increase in number of complaints and queries. All such issues are being dealt by the in-house legal counsel.

Overseas Branches and Cross Border Transactions

- ❑ Indian Corporates expanding overseas through acquisitions and investments, bidding for projects, etc.
- ❑ Even Indian banks are expanding their operations globally and meeting the funding requirements of the “Indian MNCs” and establishing businesses abroad.
- ❑ In-house legal counsel facilitates the legal compliance and documentation in such cross-border deals.
- ❑ In-house counsel also liaises with external legal counsels of other jurisdictions to ensure that all of the bank’s businesses abroad do not contravene/violate any of the concerned laws.

- ❑ Basel II norms already setting in for banks with global operations.
- ❑ The need for funds by Indian Banks.
- ❑ Required funds at the minimum cost requires banks to have a broad look to fund raising strategies beyond domestic capital raising.
- ❑ Novel modes of fund raising which includes MTNs GDRs etc.
- ❑ Involvement of the Law Department is extended to liaising with external legal counsel. Also, have to ensure legal compliance within the bank.

HR initiatives of the Bank

- ❑ Determining tax liability on a proposed incentive or benefit for the employees.
- ❑ Outsourcing or tie-ups with subsidiary companies for various businesses that can be undertaken by the Bank through its employees or outsourced personnel.
- ❑ Advisor to the Bank's HR Dept on issues regarding compliance of labour laws including contract labour, disciplinary action against certain employees.
- ❑ Protecting employees from frivolous criminal complaints by anti social elements, etc.

- ❑ Role of technology in expanding services offered by the Bank and improving the quality of the same.
- ❑ licensed software - legal standing for usage of the said software.
- ❑ the banks also use numerous services by IT Companies for the day to day operations.
- ❑ The said tie ups also receive the inputs of the in house legal counsel at various stages of the proposals with the IT Companies.
- ❑ Handling phishing attacks
- ❑ Protecting the bank's IPRs and domain names globally.

Conflict of GC vis a vis Business Department

What should be the role of the GC in such conflicts?

Is he a Shiva OR a Brahma?

GCs Role to be valued by Business - Demonstrating value

- GCs need to be influential in the boardroom and their value needs to be recognized by the chairman, independent directors, the CFO and the CEO.
- GCs can add specific value by encouraging a greater understanding of non-financial risk.
- It is the responsibility of the GC to educate their business teams and management about the legal function they perform, the role of in-house counsel, and the ways in which in-house counsel add value to the business.
- This will demonstrate the importance of the legal team, assist in justifying internal and external legal costs and help prevent the commercial teams exposing the company to unnecessary legal risk.

What is added-value legal advice?

Lawyers add value to their business in a number of ways - providing a responsive service; delivering technical know-how in a way that has a transformative impact on the business; providing commercially astute advice; and contributing to developing the strategic direction of the business within the relative legal frameworks.

- Lawyers who demonstrate the ability to be business ‘enablers’ and make commercially savvy decisions arguably find it easier to connect with the business teams and will be more successful in their careers.
- Management increasingly look to legal teams to help make strategic decisions based on both commercial and legal analysis. The ability to provide this combined advice is where GCs can really add value to a business.
- However, it is also vital for in-house counsel not to lose their legal edge.
- The ability to bring in external counsel is dependent upon the rest of the business respecting in-house counsels’ judgment.
- A commercial approach and being seen as a business ‘enabler’ is important but it is equally important to keep up to date with legislative advances / changes which may have a business impact.

In general, the greatest benefit that corporate attorneys possess over their firm brethren is the high “quality of life.” The predictability of in-house counsel’s work environment is invaluable: the lack of mandatory billable hours, the absence of responsibility for cultivating new clients and the elimination of a partner track distinguish the in-house profession from that experienced by attorneys at firms.

The increase in the use of email, voicemail and Blackberries has led clients and senior attorneys to demand answers to their questions or concerns 24 hours a day, seven days a week. The use of technology has led to increased pressure for lawyers to provide a fast turn-around to legal questions.

Thank You