

Chapter 1

Areas of focus for the law department

Law departments may expand their focus to address shifting pressures and risks.

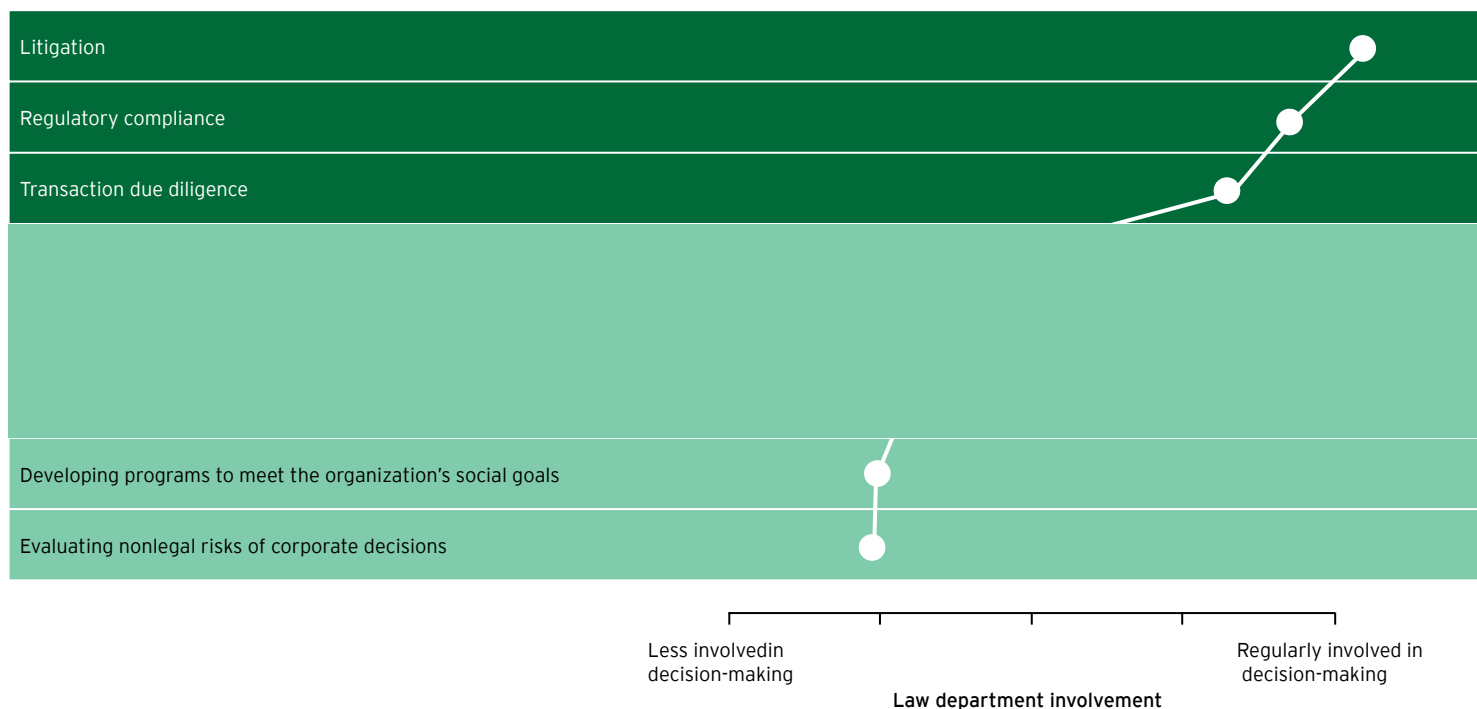
Areas of focus for the law department

With so many areas of consideration across the sustainability “spectrum,” the challenge for General Counsel is identifying which ones need the most attention from the law department.

At present, many law departments are most focused on sustainability work related to litigation, regulatory compliance and transaction due diligence. Their focus on these areas is linked to pressures exerted from investors and regulators.

How involved is the law department in the following?

Based on input from 1,000 General Counsel



When asked to grade, on a scale of 0-100, where they feel the most pressure, General Counsel put investors and regulators at the top of the list, followed in order from most pressure to least by litigants, customers, employees, the public, media and suppliers. This is likely because the expectations of these stakeholders are typically well-defined and the cost of non-compliance - fluctuations in market value, monetary penalties and decreased access to financing - are clear and acute.

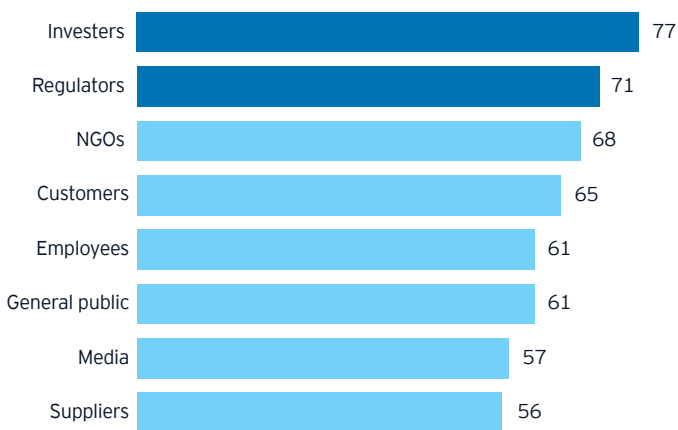


The expectations of our stakeholders are evolving. All of our stakeholders are paying attention to environmental and social issues. This includes investors, rating agencies, regulators, suppliers and customers. On top of this, our employees and the broader public have expectations that we need to take into consideration. These evolving expectations are in turn driving an evolution of the role of the legal team to be more involved across all these issues.

– **Laura Stein**, Executive Vice President, Corporate and Legal Affairs and General Counsel for Mondelēz International

How much pressure do law departments feel from the following stakeholders on sustainability?

Level of pressure felt by General Counsel (out of 100)



While General Counsel ranked the pressure they feel from investors and regulators most highly, their responses to a broad set of other groups suggest law departments' stakeholders are evolving. General Counsel reported the pressure they feel from customers and employees is only slightly behind that of investors and regulators. In the past several years, these two groups have grown significantly more active in voicing their concerns on organizations' environmental and social practices. They have also become more likely to take part in collective action initiatives such as boycotts or employee walkouts.

Interestingly, law departments report that the top risks for their organizations around sustainability are purely reputational in nature, the two highest being loss of customers due to reputational harm and damage to the brand. Conversely, challenges accessing investment and risks around new laws or regulations, while still significant and having the potential to impact an organization's reputation, came at the bottom of the list of respondents' concerns.

How concerned are you about the following risks faced by your organization due to sustainability issues or practices?

Level of risk reported by law departments (out of 100)



The comparison between pressures and risks reveals a disconnect between law departments' immediate focus on compliance and transaction due diligence and other reputational risks that sustainability concerns are posing for the organization.

“We expect to see a shift here, with law departments putting greater focus on managing reputational risks going forward, creating a better balance with regulatory and investment challenges,” says Boris Scholtka, Ernst & Young Law GmbH Energy Law Leader.

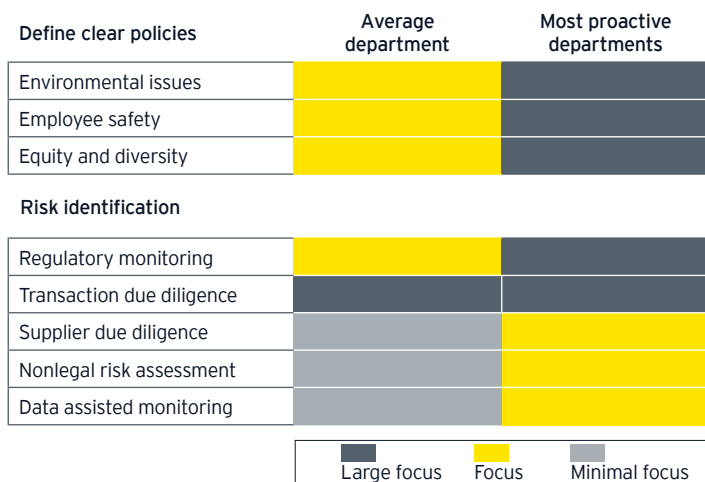
Indeed, many law departments report that they intend to expand their focus on sustainability over the next three years. The most proactive departments look to put greater focus on defining the organization’s non-legal risks and in creating policies for environmental and social issues.

Another area on which law departments plan to put greater focus is regulatory monitoring. This, says Kasia Klaczynska Lewis, Ernst & Young Law Talasiewicz, Zakrzewska i Wspólnicy sp.k. EU Green Deal Center of Excellence Leader, is a reflection of the fast pace of change in environmental and social laws. “Many business leaders are now looking to their law department to help them understand how regulations are likely to evolve over the medium term. This information is crucial when defining voluntary commitments or in deciding how to structure major investments.”

As the law department expands its remit to manage new risks, the key consideration becomes what level of in-house counsel involvement is most effective. Over the past decade many organizations have chosen to expand the remit of the law department, shifting functions such as compliance and public relations so that they report to the General Counsel. A more recent trend has seen corporate social responsibility (CSR) and environmental, social and governance (ESG) teams shift their reporting to the General Counsel. A recent report by the Association of Corporate Council found that 24% of organizations’ CSR and ESG teams have such reporting lines, compared to only 15% two years ago.

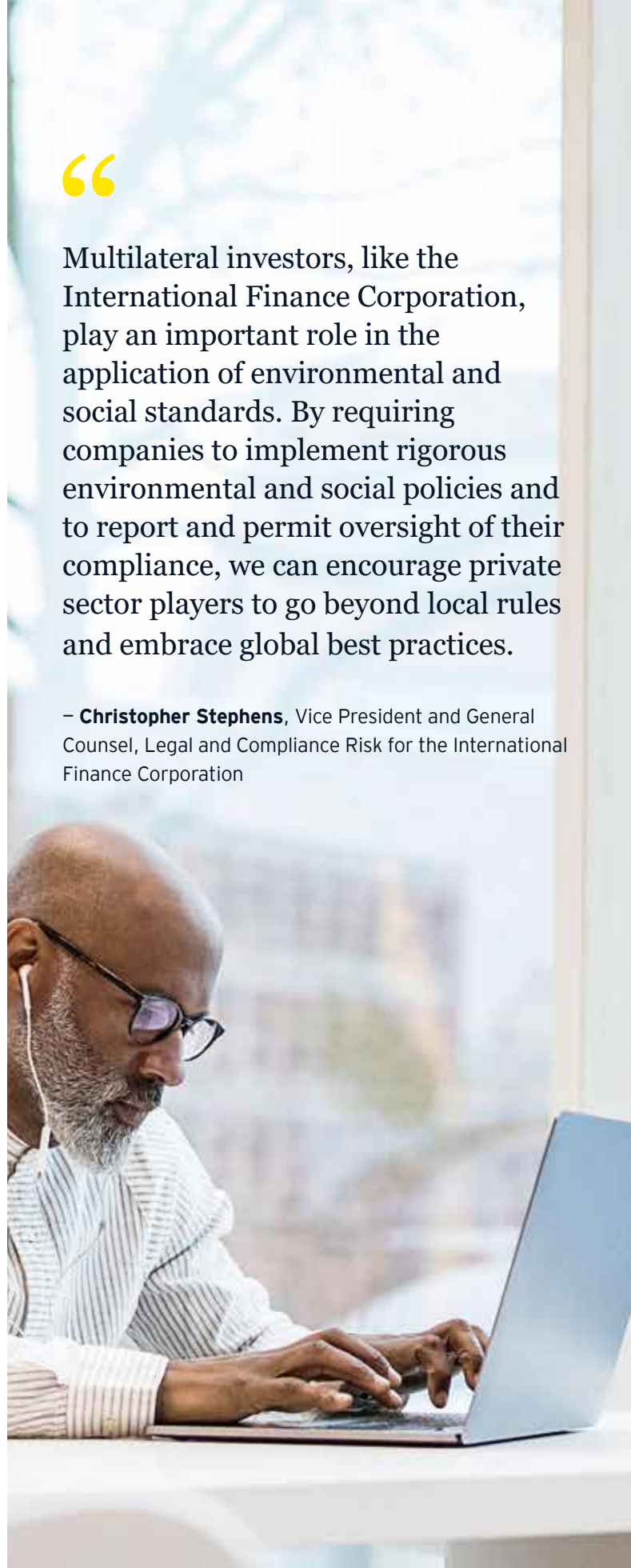
What risk management activities do law departments intend to put greater focus on over the next three years?

Summarized views of 1,000 General Counsel



Multilateral investors, like the International Finance Corporation, play an important role in the application of environmental and social standards. By requiring companies to implement rigorous environmental and social policies and to report and permit oversight of their compliance, we can encourage private sector players to go beyond local rules and embrace global best practices.

– **Christopher Stephens**, Vice President and General Counsel, Legal and Compliance Risk for the International Finance Corporation

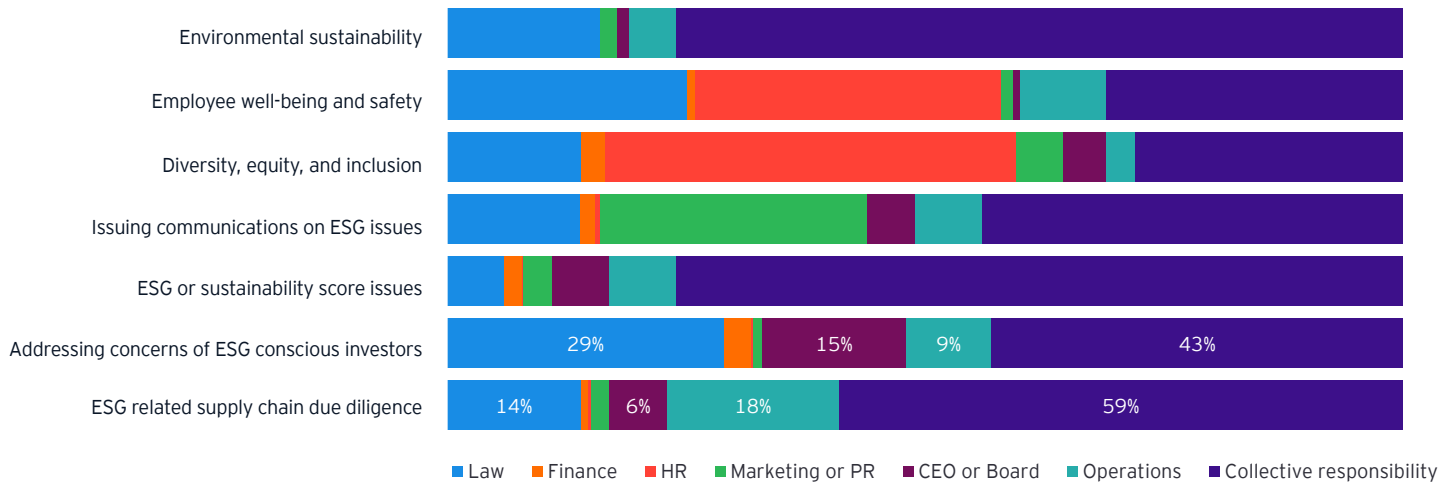


While some organizations may structure themselves so that the law department plays a leading role across sustainability concerns, others will choose a different path. In these organizations the law department may end up partnering with other functions, either as an equal or as an ad hoc advisor. The optimal level of involvement will depend on the industry in which the organization operates, the risks it faces in each area and the mitigation strategies that are required to manage those risks.

Complicating the law department's job in defining its role is the fact that many environmental and social activities are either collectively led or their ownership is split across various functional departments. As a result, close collaboration across the business is required to drive action and accountability. Law departments recognize this need, with 61% of General Counsel reporting they expect to increase collaboration with the business on sustainability.

Which part of the organization has primary responsibility over the following issues?

Based on input from 1,0000 General Counsel



Recommendations and action points

Making sure your law department is focused on sustainability in the most optimal manner means balancing stakeholders' interests and organizational risks. As your law department expands its risk management efforts, you should consider focusing on the following areas:

- ▶ Identify ways to improve regulatory compliance processes and operational adjustments to address them
- ▶ Identify non-legal risks related to environmental and social issues and create voluntary goals and a governance framework to achieve them
- ▶ Develop a detailed view of how the regulatory landscape is likely to evolve over the medium-term to future proof the organization's policies and law department's operational strategy



The role of the law department in ESG issues is evolving at an incredibly rapid pace. We are constantly re-evaluating how involved we need to be and how we partner with different parts of the business.

– **Damon Hart**, Executive Vice President and Chief Legal Officer, Liberty Mutual Insurance

Chapter 2

Navigating ambiguity and reconciling competing goals

Balancing expectations, goals and risks is necessary without clear guidance from regulators.

While law departments report that staying up to date with new regulations is a challenge, many have found strategies to help ease the burden. Only 37% of General Counsel report difficulties translating new regulations into internal policies.

The greater challenge for law departments is in working through areas of ambiguity where there is a lack of clear guidance from regulators. Indeed, 90% of law departments report challenges in creating policies where there are no specific regulations connected to environmental issues. Similarly, 92% of law departments have difficulty creating policies on social issues when there are no specific regulations to follow.

Percentage of law departments that report challenges creating sustainability policies where regulations are unclear.

Social issues

Environmental issues

92%

90%

“Workplace safety is a perfect example,” says Paula Hogéus, EY Global Labor and Employment Law Leader and Nordics Law Leader. “During the pandemic, many organizations were forced to make decisions normally within the purview of public health departments, figuring out who can come into the office and who can’t and rules around mask-wearing and vaccinations.”

Setting environmental benchmarks is another example. Organizations are facing pressure from lawmakers, employees, customers and the broader public to set goals linked to carbon emissions, plastic usage and a wide range of other challenges connected to environmental sustainability.

Corporations face similar challenges across a host of other topics including employee pay, workplace safety and social justice. The lack of clear guidance in these areas leaves corporate leaders and in-house counsel in a challenging position – forced to make decisions without clear guidance from regulators or lawmakers.

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The key to managing ambiguity is to consider the question at scale. Decisions in the ESG space cannot be made on an ad hoc basis. They must be made with the understanding that the organization is going to face similar questions again. As such, you have to understand the underlying issues at play. You also need to have a clear understanding of the organization’s values to guide you through the decision-making process.

– **Horacio Gutierrez**, Senior Executive Vice President, General Counsel and Secretary, The Walt Disney Company

Navigating ambiguity

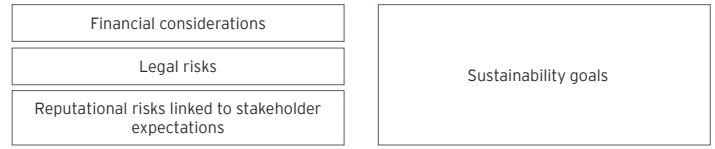
As organizations face complex sustainability expectations without the necessary guidance from regulators, it is important for them to clearly define where they stand and what their obligations are.

“Law departments should first consider the relevant legal risks and requirements,” says Grossmann. “Secondly, they need to understand what reputational risks the organization may face that are linked to stakeholder expectations. And third are financial considerations, either from the steps the organization must take to manage risk or from inaction by not meeting its legal requirements or the expectation of its stakeholders. All of this should be balanced with the organization’s sustainability goals.

To reconcile these pressures, law departments should consider taking three actions:

- Educate leaders on the risks faced by the organization:** Currently, only 15% of General Counsel believe their organization’s leaders fully appreciate the environmental risks. Similarly, only 39% believe leadership fully appreciate the social risks to the organization.
- Work with the C-Suite to clearly define the organization’s goals:** Understanding goals and values is critical to effective decision-making. While 69% of General Counsel say their organization’s social goals are clearly defined, only 22% say the same for environmental goals.
- Drive internal conversations to develop an agreement on how to reconcile trade-offs and competing goals:** Competing goals are inevitable, and a robust framework to manage them is important. It is not straightforward with 95% of law departments saying that reconciling trade-offs between financial and sustainability goals is a challenge.

95% of law departments report reconciling trade-offs between financial and sustainability goals is a challenge



Law departments have important qualifications that can help their organizations reconcile these pressures and competing goals. Lawyers have deep knowledge of the law, regulations and the approach regulators use to evaluate an organization’s practices. They also have experience reconciling legal and ethical dilemmas, and many have experience in considering precedent and how actions now may impact the future.

Additionally, the law department has deep connections to most of the business issues that link into sustainability, such as labor and employment, litigation, supply chains, contracting, transactions, compliance, data privacy and environmental concerns. This gives them a unique ability to help drive decision-making on sustainability across the enterprise, particularly when clear regulatory guidance is lacking.

Percentage of General Counsel who agree that leadership appreciates the risks facing their organizations arising from social and environmental issues

Social issues

Environmental issues

39% **15%**

Percentage of General Counsel who believe their organizations goals are clearly defined

Social issues

Environmental issues

69% **22%**

Recommendations and action points

To assist your organization in resolving complex sustainability challenges, General Counsel should:

- ▶ Establish your department as a leading voice within the organization on complex sustainability issues
- ▶ Develop clear guidance on values and goals and a framework to use when reconciling competing interests



Chapter 3

Managing increasing workloads

The growing importance of sustainability is expected to increase law department workloads.

Managing increasing workloads

The EY Study reveals that environmental and social concerns are going to significantly increase the workload of law departments. Indeed, 99% expect their workloads to increase over the next three years.

The extent to which that is expected to happen is significant. Over 40% of General Counsel anticipate that environmental and employee safety-related work will increase by 10% or more per year over the next three years. Similarly, 24% expect diversity, equity and inclusion work to increase by 10% or more. While General Counsel from every sector expect workloads to increase, the Study reveals that large companies with prominent roles in the economy, such as finance, energy and consumer facing organizations, will be impacted most.

This rise in work is due in part to the proliferation of new laws, increased regulatory enforcement and increased reporting work often linked to investor concerns. It is also due to the growing volume of advisory work where the law department advises the organization as a business partner on complex matters and those linked to reputational risks.

While law departments' current involvement in these matters varies, there is widespread agreement among respondents that higher-value advisory work linked to sustainability is likely to increase significantly in the next three years.

Allocation of resources

There is little agreement among surveyed law departments on how they will manage these growing workloads. According to the Study, law departments are taking three distinct approaches:

- ▶ Twenty-four percent plan to insource most of the sustainability work through hiring or reallocating existing talent. External providers will be used on a tactical basis.
- ▶ Forty-six percent plan to insource most of the sustainability work and increase the use of technology and process management to optimize internal operations. External providers will be used on a tactical basis.
- ▶ Thirty-four percent plan to implement a mixed sourcing strategy that deploys internal resources, external legal advisory and alternative legal service providers based on the requirements of the task and the capabilities and cost of the resource.

It's worth examining each of these three approaches in the context of talent, costs and challenges facing law departments.

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While markets like Singapore do not have the same level of environmental and social regulations that we see in Europe, we are impacted by what happens in other parts of the world. US and European reporting requirements have a direct impact on Asian firms operating in those markets. Additionally, our regulators are watching the rest of the world. Some of Europe's rules may very well end up being adopted in Asian markets.

– **Shantini Sanmuganathan**, Group General Counsel, Singapore Telecommunications

General Counsels' views on sustainability workloads

Based on input from 1,000 General Counsel

Growing workloads:

99% of General Counsel expect sustainability workloads to increase over the next three years

Budget shortfall:

94% don't have the required funds to support their organization's sustainability initiatives

Expertise limitations:

96% believe their law department lacks the required legal expertise to manage sustainability issues

The insourcing model may be problematic in that 96% of General Counsel report that the law department does not have the expertise needed in sustainability, environmental and social topics. Additionally, 94% don't believe they have the required funds to support their organization's sustainability initiatives.

Indeed, law departments are facing significant pressure to reduce costs. The 2021 EY Law Survey conducted together with the Harvard Law School Center on the Legal Profession showed that 88% of General Counsel are planning to reduce the overall cost of the legal function over the next three years, with 50% saying those reductions will be 20% or more.

Combining insourcing with technology and process improvements may potentially help law departments better handle higher volumes of work. While some law departments have made progress with process improvements and increased use of technology, many have faced obstacles. According to the 2021 EY Law Survey, the majority of law departments reported a lack of necessary skills, and time and change management challenges have been barriers to their success.

The mixed sourcing strategy has the potential to address challenges around expertise, process improvements and technology. The key is going to be pairing the right task with the right sourcing strategy to create an optimal portfolio, both in terms of operations and managing costs.

"Selecting an approach ultimately depends on the circumstances of the law department in question," says John Knox, EY Global Legal Operations Leader. "The key is to identify a strategy that allows law departments to manage increasing compliance and reporting workloads, while also reserving enough time to be able to partner with the business on more complex challenges that are reputational in nature and where there is sizeable risk."

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The law department's operational model across environmental, social and governance issues has become increasingly complex. We developed an agile ecosystem of unique multidisciplinary capabilities. Internally, we have hired subject matter experts to advise the company on these issues as well as develop our own resources organically. We have also developed strong ties with select external law firms who have deep knowledge in areas that complement our in-house expertise. On top of that we continued to foster strong relationships with our internal clients and act as true partners in responding to these ever-evolving issues.

– **Nabeel A. Al Mansour**, Senior Vice President and General Counsel, Saudi Aramco



Recommendations and action points

To manage increasing workloads, General Counsel should look at refining your law departments' operating model to ensure you have the capacity, expertise and resources to focus on higher-value activities by taking the following steps:

- ▶ Conduct a spend-management assessment to understand how internal and external resources are currently utilized
- ▶ Define the operational strategy going forward with a model matching tasks with appropriate resources
- ▶ Build internal and external capabilities, such as centers of excellence or technology improvements, to execute the strategic plan

Conclusion

General Counsel and your law departments are well positioned to play an important role helping build the partnerships, goals, guidelines and governance frameworks that will help organizations address the sustainability imperatives they face. To do that, General Counsel should:

- ▶ Consider expanding your risk management efforts to cover reputational or non-legal risks associated with sustainability
- ▶ Work with the business to identify the scope of the department's role in sustainability, along with the roles of key partners and stakeholders, to help foster action and accountability
- ▶ Develop a shared understanding of the risks the organization faces and the goals it is working toward and create a decision-making framework for managing complex sustainability challenges, particularly in areas where there are no clear regulations
- ▶ Develop an operational model for the department that provides the flexibility, scale and the unique expertise required for sustainability work

While the EY 2022 General Counsel Sustainability Study makes it clear that law departments face a broad range of obstacles in these efforts, many law department leaders are recognizing the need to mobilize around sustainability and are rising to the challenge.

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