



2021 Retrospective White Paper 1 of 2

## **Main Challenges Facing the Modern CC**

## 2021 retrospective: How modern General Counsel are rising to meet ever-increasing challenges

It's been a busy year for general counsel, with lots of twists and turns for corporate law departments. In 2020 and 2021, the pandemic had significant effects on workloads, resources, and responsibilities. As a result of the pandemic, eight times as many corporate law departments saw a surge in workload as saw a decrease, according to the **Thomson Reuters "2021 State of Corporate Law Departments"** report. At the same time, five times as many law departments had their budgets decreased compared to those whose budgets increased.

The need to protect the company became the top priority during the pandemic, reflected in the fact that 40% of law departments put new dispute prevention measures in place to supplement existing policies, according to the report. With so much change occurring, potential disputes seemed to arise from all sides. Legal departments helped their organizations comply with mandates related to the coronavirus and establish remote work procedures and policies, all while increasing the efficiency of their operations to "do more with less" and minimizing potential damages in a volatile and fast-changing situation.

It's worth reflecting upon how in-house law departments have risen to these unusual challenges - and how general counsel can apply these insights as they prepare for 2022. In our white paper, "**Navigating Unfamiliar Legal Ground**," which we released earlier this year, we discussed five key challenges modern general counsel have had to confront. In this retrospective, we take another look at how these challenges have changed the role in-house lawyers play and will likely continue to play in the foreseeable future.

### 1. Navigating key changes in the role of in-house counsel

In challenge one, we highlighted how small business lawyers have become generalists who need to cover multiple areas of law - and more. The terrain that the modern general counsel must cover is expanding, and the pace of change is intensifying. In short, corporate law departments must now be adept at managing issues that reach far beyond strict legal matters. As "**Navigating Unfamiliar Legal Ground**" puts it:

*It's no longer enough to be a great lawyer - protecting the company and managing risk are now the bare minimum. Due to disruptions in the legal profession and business at large, the in-house lawyer must encompass leadership and diplomacy and serve multiple roles: business partner, corporate officer, company representative in third-party dealings, and key negotiator in a range of strategic transactions.*

In such an environment, lawyers for startups and small businesses can no longer afford to be reactive in how they do their jobs.

"Proactive" is the new watchword for modern general counsel.

According to the "2021 State of Corporate Law Departments" report:

*The in-house legal team needs to keep close to the business, not just by identifying and mitigating potential risks, but by taking a more proactive role, providing a sounding board for new strategies, and bringing forward potential solutions.*

Being proactive requires that general counsel develop a broad understanding of how the company functions, the activities it pursues, and the legal environment in which it operates. Within this context, lawyers should anticipate potential changes to all three of these, mentally playing out "what if" scenarios so they can respond quickly and confidently to upcoming shifts. Being proactive also requires general counsel to consider actions that can shape the legal environment for the company and to see how legal actions may affect various functions across the company, as well as how they might play out in different jurisdictions.

### 2. Coordinating across functions

In challenge two, we took a closer look at how in-house counsel must understand and align with other functions in the organization and with other business drivers. Beyond providing legal advice and action, lawyers for startups and small companies are likely to be involved in business activities and strategic decision-making, including auditing, compliance, executive management, HR functions, corporate social responsibility, and media relations. They may also be involved in government affairs, regulatory processes, and lobbying.

This is all in addition to their role as advisors to (-suite executives and the board of directors on issues of business and corporate governance. Many general counsel serve as chief governance officers (CGOs), handling the creation and implementation of a governance framework that sets the company up for compliance and satisfies stakeholders' needs.

In the course of filling this expansive set of roles, according to "Navigating Unfamiliar Legal Ground":

**Lawyers...may find themselves, in rapid succession, advising on an acquisition, assessing intellectual property issues, considering a lease issue, evaluating the risks inherent in a proposed business expansion - all while juggling assorted crises, HR and compliance questions, and ad hoc requests from around the company. Each matter requires rapid command of the latest know-how, legislation, regulations, cases, and rulings across jurisdictions.**

As the white paper goes on to say, this overlapping set of responsibilities means that modern general counsel are "deeply involved in every major issue, challenge, and opportunity facing their organizations."



### 3. Working with ingenuity

In challenge three, we noted that in-house counsel are having to rely upon their ingenuity to deliver more with less. In 2020, according to the "2021 State of Corporate Law Departments" report, 58% of corporate law departments experienced increased workloads as a result of the pandemic, while 29% experienced budget cuts.

The pandemic brought new challenges for legal departments, including four key issues identified in the report:

- Ensuring compliance with dynamic COVID-19 requirements
- Enabling effective work from home
- Maximizing operational activity within dynamic environments
- Minimizing potential damages

Legal budgets will continue to be stretched, because the demands of working in a COVID-19 environment will remain while business ramps back up to pre-pandemic levels. Continuing ingenuity will be required of modern general counsel as "do more with less" remains a new normal for the time being.

One way modern general counsel are doing more with less is by increasing their use of legal technology. According to the "2021 State of Corporate Law Departments" report, 30% of law departments have increased spending on technology since the beginning of the pandemic. The Blickstein Group's **13th Annual Law Department Operations Survey** lists the five technology solutions law departments are most often seeking to procure:

- Document management
- Legal business intelligence

- Contract artificial intelligence (AI) for analysis, risk assessment, or due diligence
- Contract management
- Legal workflow automation

However, in their search for useful tech, legal departments should resist the temptation to turn to free tools and resources. As "Navigating Unfamiliar Legal Ground" states, free resources not only pose a potential security risk but also can be "generally unreliable, time-consuming to navigate, and built upon sources that are not properly vetted or regularly updated."



### 4. Handling disruptions

Like the other employees of the firms in which they work, in-house lawyers have spent the better part of the last two years working from home. As detailed in the "2021 State of Corporate Law Departments" report, a successful remote work scenario provides many opportunities, such as the ability to be more flexible with office space and the chance to hire talent and new suppliers beyond the immediate geographic area.

Although most general counsel have adapted well to remote work, the pandemic still presents uncertainty and challenges to companies. In challenge four, we discussed these disruptions and changes, some of which have deep legal implications. Lawyers for startups and small businesses will need to continue playing a crisis-management role as part of their daily functions.

For example, in 2020 and 2021, legal departments handled more disputes related to the pandemic. Did a company's rule on mask-wearing or working at home run afoul of a contract or trigger a material adverse change clause? This uptick in disputes has caused companies to think anew about several processes, with legal advisors closely involved in making changes. The "Navigating Unfamiliar Legal Ground" white paper explains:

**Understandably, these issues have prompted businesses to reconsider how their supply contracts are drafted, with many customers and suppliers now insisting on more flexible terms with regard to payment structure, sourcing from third parties, and managing unforeseen difficulties.**

Top dispute-prevention measures that general counsel have been asked to weigh in on are contract review and renegotiation, ensuring compliance with new regulations, and creating new corporate policies. Many companies are also working to have more transparent communication with employees, customers, and suppliers to reduce the likelihood of disputes.

## 5. Managing political tensions and social issues

In challenge *five*, we looked at the challenges legal departments face from rising political tensions and social unrest. The pandemic wasn't the only unexpected societal change in-house lawyers have had to navigate in the last couple of years. Social upheaval and political tensions have been various and ongoing, sometimes touching on topics or reaching levels that make a public response all but mandatory for corporations. "Navigating Unfamiliar Legal Ground" lays out the new world that companies are confronting:

***Companies are facing increased pressure from governments, regulators, investors, and consumers to develop and maintain effective corporate social responsibility (CSR) policies and mandates, and to embed these measures into their wider business operations. In recent years, much of the focus has centered around issues emanating from the Me Too and Black Lives Matter movements, which will continue to affect the social agenda. In addition, it is likely that legal departments will see more activity requiring transparency in supply chains, particularly as it relates to climate change, human trafficking, and modern-day slavery, and other human rights abuses.***

As we concluded challenge *five*, we identified four key responsibilities of the small business attorney working across an expansive legal terrain, which included:

- Delivering sound guidance that reflects the latest legal and regulatory developments
- Responding to crises, safeguarding against risk, serving as strategic advisors to the entire business, and facilitating growth
- Ensuring operational efficiency, relying less on outside counsel, and avoiding turning to inadequate online resources when new issues emerge
- Quickly developing solid foundational knowledge of unfamiliar areas of law for the times when they are working with and directing counsel



### Looking ahead to 2022

"For many industries, including legal, operating in an uncertain political and economic landscape will continue to be the norm," we noted in the "2021 State of Corporate Law Departments" report. "And law departments will be central in helping their organizations maximize performance while they minimize both near-term and future risks."

Law departments are in many ways becoming agents of change within the organizations they support. Lawyers have had to shift how they work in various ways, with some of the changes - such as the evolution of technology - potentially becoming permanent.

All this change begs a question: Are in-house lawyers even lawyers, first and foremost, anymore? Of course, they must be lawyers in training and knowledge. But as the 2021 white paper and report point out, in many ways their ability to think strategically and make business-oriented decisions - that is, to be businesspeople as well - is paramount to their success and the success of their companies in 2022 and beyond.

That being said, whether a modern general counsel leans most heavily on legal knowledge or business know-how is unimportant compared to whether they are prepared to move in and out of a range of roles and subject areas. As "Navigating Unfamiliar Legal Ground" states:

***...it is no surprise that the in-house lawyer in a growing business is often referred to as the jack of all trades. The need to be instant experts across a vast range of matters and specializations can be a daunting prospect....***

Having ready access to reliable information and tools is essential for the success of any legal department, especially a jack-of-all-trades department of one. The white paper continues:

***Indeed, confidence in your legal answers to novel questions can present a challenge to the most capable of lawyers. Once you have become oriented and spent time on research, second-guessing, and double-checking, you expect to have a complete picture. However, it can be challenging to form a high-confidence interpretation when you're working in an unfamiliar area of the law and the quality of your data sources is unknown.***

Resources like Thomson Reuters® Practical Law are indispensable in helping general counsel do their work accurately and efficiently. And the Thomson Reuters Institute brings together people from across the legal, corporate, tax and accounting, and government communities to ignite conversation and debate, make sense of the latest events and trends, and provide essential guidance on the opportunities and challenges facing their world today.

Check out the companion white paper, "2021 Retrospective: Five Modern General Counsel Reflect on Facing Today's Challenges," to learn more about how lawyers are meeting and overcoming the challenges faced by the modern general counsel.

---

### Thomson Reuters

Thomson Reuters is a leading provider of business information services. Our products include highly specialized information-enabled software and tools for legal, tax, accounting, and compliance professionals combined with the world's most global news service - Reuters.

For more information on Thomson Reuters, visit [tr.com](https://tr.com) and for the latest world news, [reuters.com](https://reuters.com).

---

### Contact us today

888-728-7677

[legal.thomsonreuters.com](https://legal.thomsonreuters.com)