

STRUCTURING THE IN-HOUSE LEGAL DEPARTMENT BUDGET



THE LONG VIEW OF PRICING, PAYMENTS AND PROFIT

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Thomson Reuters has issued its 2022 Legal Department Operations (LDO) Index Survey, and as expected, the report reveals that last year, in-house corporate legal departments continued to face serious pressures as to controlling costs, dealing with an increase in workloads, and staff fulfillment problems. Given the recent global economic uncertainties, and the rise of new and somewhat uncharted legal issues regarding the adoption of ESG priorities, in-house legal is facing strains that did not exist just a few years ago. One would think that the advancement of new technologies would offer an assist to relieve some of that pressure, yet, just the opposite is true, as the integration of rapidly evolving AI and other technologies places additional demands on in-house legal departments. We will examine ways to lessen the budget burden and increase efficiency while keeping pace with department demands.

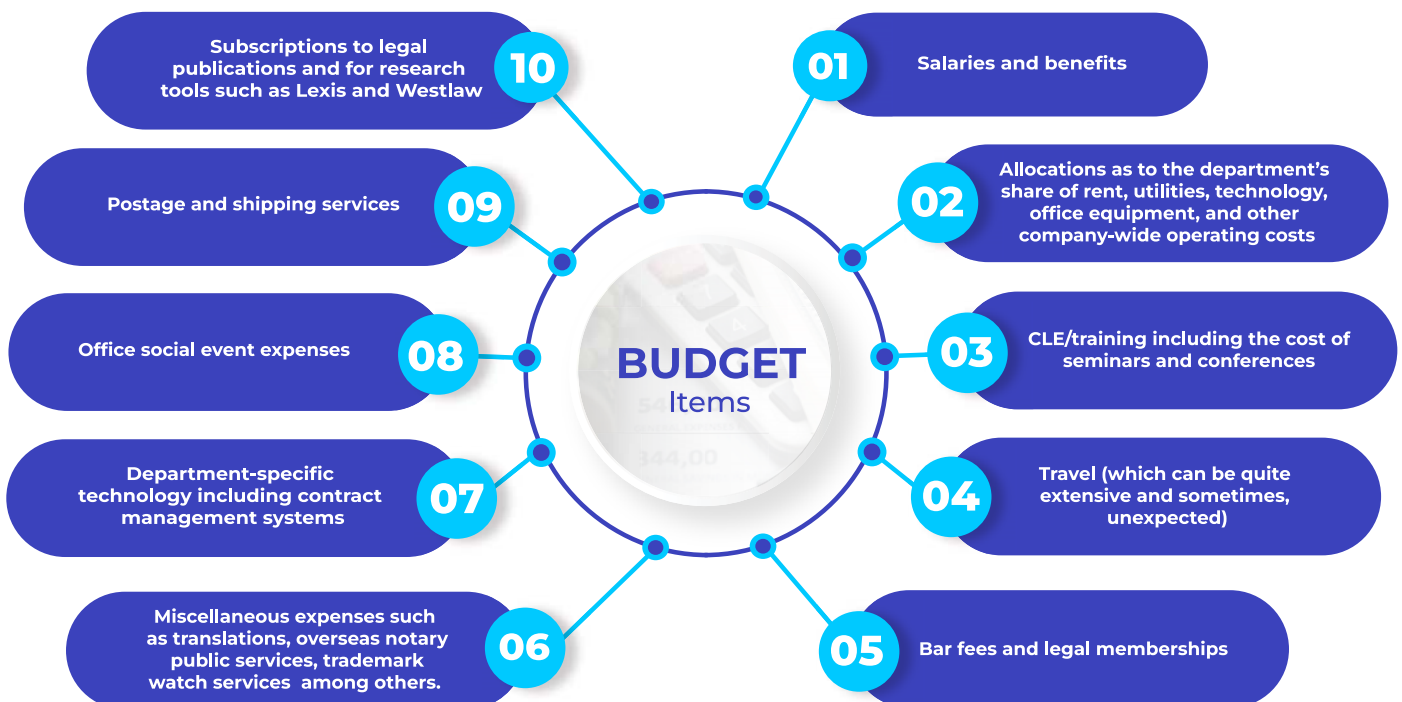
The Move to In-house

The address change for legal spend seems to be a cyclical phenomenon, with some eras experiencing a trend towards greater utilization of outside counsel while other years see the opposite trend of moving the corporate legal department back in-house. We are currently in the latter cycle.

While some entities reasoned that it would be cheaper to pay an inside legal department than cope with the ever-increasing rise in fees paid to outside counsel, not all companies properly planned for the move nor anticipated what the real costs would be.

Legal Department Budget Basics

Although different organizations might allocate certain company-wide expenses to different departmental budgets, according to Sterling Miller, a Chief Compliance Officer and General Counsel with 25 years' experience, the following are items which should be a part of an in-house legal department budget but sometimes are presumed to be budgeted elsewhere:



Lastly, the in-house legal department budget cannot ignore the fact for some matters, yes, outside counsel will still need to be retained.

Make Use of Available Resources

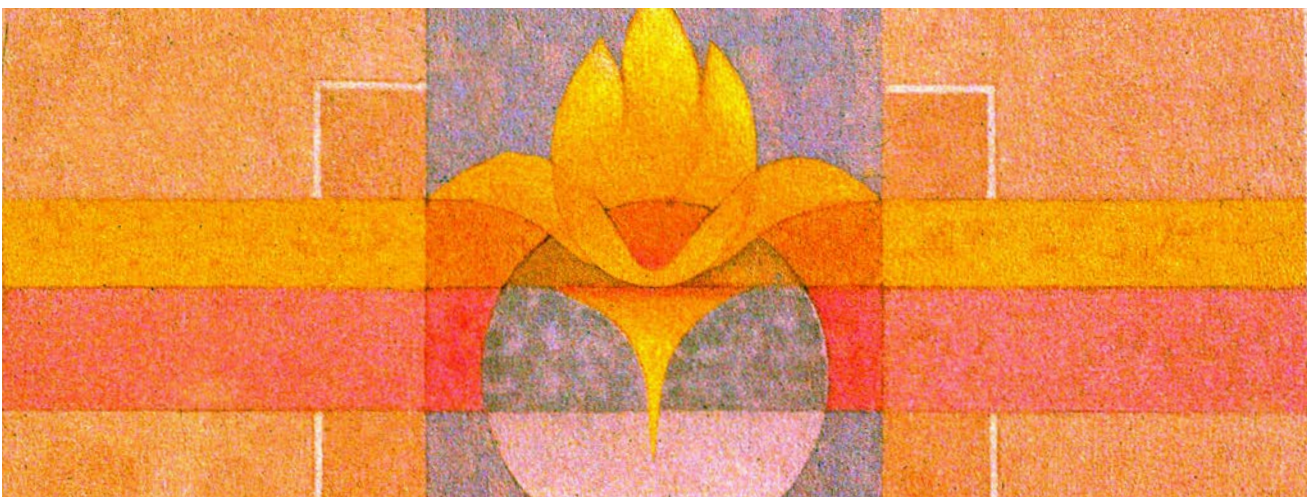
The corporate finance department is there for a reason, and the manager of the in-house legal department should not only refer to the CFO but also fully involve him or her in the budget planning process. The other most important resource is the legal team that you work with. True forecasting can only come from the parties who already have a track record from last year and who can therefore render input as to where the department's financial support fell short of what was needed, as well as provide a picture of anticipated needs going forward based on what projects are in the pipeline or scheduled for the coming fiscal year.

Shifting Priorities

Despite the fact that previous years' budgets typically can—and usually do—serve as a guidepost for the current financial planning of your in-house legal department, new realities on the ground can make such reliance on past planning less than useful. 2022 saw a significant increase in the volume of legal matters imposed upon corporate legal departments, and in addition, unaccustomed issues such as corporate environmental practices and ESG policymaking and implementation—which are rising in importance—have further encumbered in-house legal staff workloads. Furthermore, many legal departments have not been adequately prepared to deal with the emergence of these new areas of practice.

“THE VERY FIRST THING YOU NEED TO DO WHEN PREPARING AN ANNUAL LEGAL DEPARTMENT BUDGET IS TO UNDERSTAND AND ACCOUNT FOR ALL THE DIFFERENT ITEMS THAT MAKE UP THE BUDGET. IF YOU FORGET SOMETHING, YOU CAN END UP WITH SOME BIG, COSTLY HOLES. SO, IT’S WORTH SITTING DOWN AND THINKING HARD ABOUT IT.”

**—Sterling Miller, CCO,
GC, Marketo, Inc.**



Capitalizing on Legal Tech

As with most aspects of corporate operations and governance today, advanced technology needs to be aggressively employed in furtherance of in-house legal department needs and efficiency. Although in-house legal departments have been rather hesitant to adopt automation—a characteristic of the legal profession in general—the COVID-19 pandemic informed the profession that such resistance was no longer practical nor affordable. Rather, investment in technology that aids various legal functions, especially regarding compliance and transactional work, is now a necessity.

As succinctly summarized by Zack Hutto, Director, Advisory at IT consulting company Gartner: “The new pressures brought about by the coronavirus pandemic certainly have acted as a catalyst for this shift. Legal and compliance teams have rarely been frontrunners to modernize, digitalize and automate. The pandemic has flattened staffing budgets and increased legal workloads; technology is the most obvious solution for many legal departments.” Accordingly, in-house legal must carefully weigh which technologies to embrace in order to drive desired outcomes.

In sum, regardless of where the new pressures and demands come from, in-house legal department managers will have to rise to these challenges and address them head-on in order to maintain productive and efficient corporate legal operations.

Executive Summary

1. The Issue

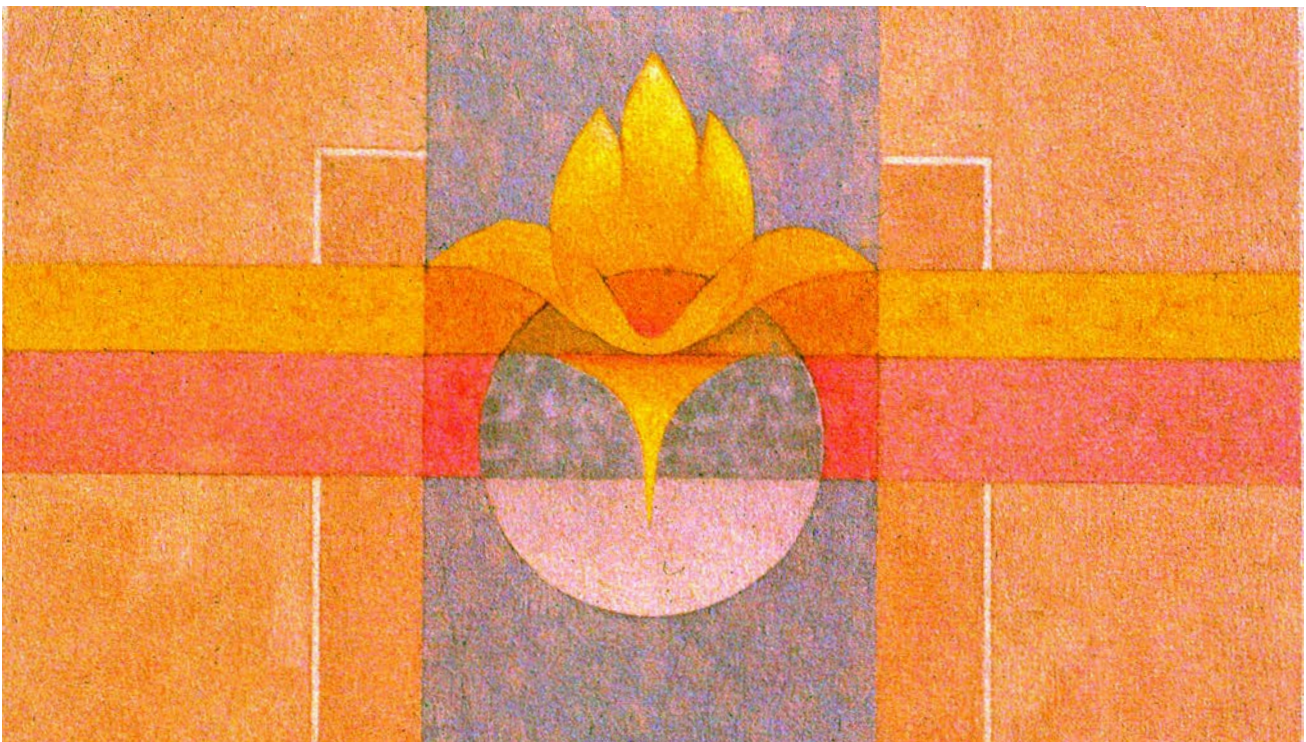
How to structure in-house legal department budgets given the unprecedented challenges facing in-house legal?

2. The Gravamen

The shift to more in-house legal operations, as opposed to the utilization of long-established outside counsel models, demands that greater attention be paid to the nuances of legal-spend budgeting.

3. The Path Forward

In-house legal departments will have to shoulder an increasing workload which includes much previously uncharted territory, all while maintaining financial and operational efficiency.



Action Items:

1 Listen to Your Team:

Budget planning input should be both bottom-up and horizontal, involving members of the in-house legal team as well as corporate finance managers.

2 Department-Specific Allocations:

Don't assume that shared operational expenses will necessarily be expensed only from a general budget, as opposed to being proportionally shared by your own department's budget.

3 Devil Is in The Details:

Avoid end-of-year budget shortfall surprises by plugging in every conceivable expense line item that you and your input team can think of, and don't hesitate to draft multiple versions before finalizing.

4 Future Planning:

The realities of the past three years have taught us that the operations of an in-house legal department are far from static but rather quite dynamic. Plan for the expenses associated with new practice areas and necessary technologies that were likely not a part of previous budget considerations.

Further Readings

1. <https://www.gartner.com/smarterwithgartner/5-legal-technology-trends-changing-in-house-legal-departments>
2. <https://www.law.com/corpcounsel/2022/06/14/in-house-spending-eclipses-outside-spending-in-new-legal-department-benchmarking-survey/>
3. <https://www.globallegalpost.com/news/corporate-legal-spend-shifts-more-in-house-report-finds-828184374>
4. <https://www.inhouselawyer.co.uk/legal-briefing/smarter-legal-budgeting/>
5. <https://abovethelaw.com/2022/12/79-percent-of-in-house-legal-departments-report-strained-budgets-and-all-100-percent-of-those-report-increased-workloads/>
6. <https://www.thomsonreuters.com/en-us/posts/legal/ldo-index-report-2022>



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After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions. Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.



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William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years' experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.



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