



The future of the legal profession

Podcast with Stuart Fuller, Head of Global Legal Services, KPMG International

Musical Intro

Announcer:

Hello and welcome to another episode of 'Future of Legal', the KPMG podcast series for Legal leaders. For today's episode I'm joined by Stuart Fuller, Head of Global Legal Services, KPMG International. In today's episode we will discuss the future of the legal profession. Stuart, thanks for taking the time to join me on the podcast today.

Stuart Fuller:

Well, thanks for having me. It's great to be here.

Announcer:

So, Stuart, in today's business and legal environment, the speed of change can be dramatic. From business model change, geopolitical factors, regulatory developments and increasing digitization, legal departments have a lot on their plate! But, What would you say are some of the biggest issues the legal profession and legal departments themselves are facing right now?

Stuart Fuller:

Well, indeed that's a big question, and there's a number of issues at play for the legal profession and for our clients, particularly those operating in the multinational space. So, there's probably five in particular I'd highlight. First is we're seeing many organizations looking hard at their

business models in light of economic uncertainty and the increasing complexity in the business and political world, and this is placing new and increasing demands on legal departments as their own companies look to restructure. Secondly, you've got a relatively fraught trading environment impacted by supply and demand dynamics accelerated by COVID, as well as geopolitical and geo-economic uncertainty. And all of these factors are creating new legal challenges for organizations that are looking to adapt quite quickly to those changes. Thirdly, you've got new cross-border operational complications and complexities which are really creating an increase in mass claims against organizations. So, whether that's mass consumer claims, contract revocation arbitration, and all of those claims are increasingly placing burdens on legal functions. Fourthly, you've got the risks associated with a clear oversight and control of our clients and their organizations, group organizations, the subsidiaries that are largely on a global basis for many of our clients. And in the current regulatory and political environment, noncompliance is creating an increasing risk to those organizations. And last but not least, with all of those complexities, we're seeing the need for business to move even more quickly than ever before. To meet these changing demands, and that's putting increasing pressure on legal departments to reimagine their operating model so that they can keep up with the pace of business change.

Announcer:

Yes, Stuart, there's certainly a lot at play that may keep a General Counsel up at night. Let's dive a little deeper into each of those topics you've raised.

You mentioned the uptick in business reorganizations. What are some of the factors at play that are driving organizations to consider a business reorganization? And how can the legal department help prepare for this?

Stuart Fuller:

Great question. So, there's two business changes and one big regulatory change that we're seeing coming here for clients and therefore having an effect on their legal department. The first is just businesses looking hard at their own strategy, so if I'm a global or multinational organization and I'm looking at my business strategy, I might choose to restructure my business by splitting off a particular geography or a particular line of business, or a particular type of business, and that is creating the need to reorganize and restructure the company, liquidate some of its subsidiaries, sell the assets off or simply float them off or trade them off into another vehicle. So that's where the organization, the client is actually saying there's a strategic change in our business. The second is where there may be business or financial trading pressures on the organization that is forcing it to restructure. So, that's not a financial restructure or an insolvent restructure, it's just where the company says, you know, I need to make some changes to raise some capital, or to create some liquidity, that allows my other ongoing part of the business to continue to operate well, and so we're seeing that increasingly. And we certainly saw that through the pandemic with COVID, where there were some short-term pressures on organizations that created some need for restructuring. And the third is coming out of the global minimum taxation changes, so what's commonly referred to as BEPS, the base erosion and profit shifting, and that's at the moment sitting in the chief tax offices, or the head of tax offices. They look at the impact of that global minimum taxation on their organizations and the financial and tax impact. We think that's going to quickly become a business restructuring impact, and whether

that's, as I said before, changing the shape and nature of where the company operates - it might change the way that internal arrangements are documented, it might change the way that treasury functions are housed in organizations, but we think that those minimum taxation changes coming from BEPS is going to actually go from the head of tax to the General Counsel and the legal department quite quickly.

Announcer:

You mentioned how the trading environment has been impacted by a number of factors. Can you expand upon this? How are these having an impact on the legal profession? How are the general accounts as we speak with responding?

Stuart Fuller:

So, trade and investment are key to all of our clients, it's core to their business. So, we're seeing a couple of factors here. So, one is again just pure business issues, which is supply chain and restructure supply chain as a result of business condition changes, and again through the pandemic, we saw a significant increase in this activity, which was really forced onto our clients by supply chain pressures - the need to reorganize or restructure supply chains, and the need to reorganize businesses, the business organizations, and the business structures that supported those supply chains. So, that might go from changing a center of manufacturing, changing a location in which the company operates, through to just simply re-contracting or re-papering the way that companies do their trading arrangements, because the other thing that the pandemic showed a lot of our clients is, if you can't find your contract that you need to enforce with your customer, the contract is actually not worth the paper it's written on. So, there's been a lot of activity around where do contract sit, who owns the contracts and what's the control process over the contracts.

The second comes really into investment law changes. So, what we've seen over the last few years is increasing government and regulatory controls over cross border investment, so that's the broadening of a lot of the tests that governments supply from a national interest test, to a national interest and a national security test.

And of course, that's raising greater complexity and cross border transactions, it's raising greater compliance organizations if conditions are imposed on those transactions, it's creating regulatory engagement that our clients need to increasingly do. All of which creates and imposes greater demands on the legal function.

Announcer:

So, I imagine there would be a lot of complex legal issues to consider when dealing with some of the mass procedures you mentioned earlier. Why is this increasing?

Stuart Fuller:

Yeah, It's a great question. So, it's really the rise of the consumer/producer relationship. So, where we've traditionally seen this come through is in mass consumer claims. So, a company has a product that maybe hasn't performed to standard, and there's a large number of consumers with a claim against that company. That's where you've traditionally seen those claims. You've also traditionally seen them in the financial advice, financial product area, which often comes into remediation. Going forward, we think this is going to widen into a couple of other areas. So clearly into cyber and privacy. So, invasions of privacy, privacy breaches, cyber breaches, which could be made against one organization but affect multiple customers of that organization. The second of course is ESG, where you have stakeholders, whether that's shareholders or community or community groups who think an organization isn't adapting fast enough to climate change or to the ESG demands and brings a legal action against those. So, each of those actions has one common factor which is one organization against whom the claims are made, but multiple people who are parties to the claims. And that's where our experience from dealing with this, particularly in Europe, has been where technology becomes absolutely fundamental. It's no solution these days to simply throw more people at a mass claim or a mass consumer claim. You need good quality lawyering to actually workout the substance of the claim and how to manage it. But then you need a

technology enabled solution so that you both get the procedure of the claims managed in the most efficient manner. And that's including with the courts, but you also get the data and the transparency, to management of the organization and the General Counsel and the in-house counsel team so that they have real time data on where the claims are, the number of the claims, the status, and what's the likely path to settlement. So, you've got that sort of increasing community consumer pressure, increasing regulatory demands and society demands, and therefore the need for technology to be a fundamental and intrinsic part of that solution.

Announcer:

And Stuart, what should organizations consider? Is this an area where you're seeing technology play an increasing role?

Stuart Fuller:

Yes, yes, absolutely. And in fact, I would say in any of the solutions that that we look to take to a client, whether it's a business reorganization solution, a cross-border M&A solution, a global entity management solution or a mass claims solution, we see technology as a fundamental part of that solution. So, that can be both in the delivery platform to the client, or it can be the way that we use technology to enable the solution that we bring to a client to make it more efficient. So, the mass claim example where you have thousands of claims, have technology as a way to manage those claims in a consistent way, both within the process, and with the with the court system. But secondly and importantly, the reporting and the data that you get from it. So, the great benefit of technology isn't just to make the process more efficient and more transparent, but it allows us to give to our clients and for the clients to get from their own business much higher quality and much higher quantity level of data, about where they are in the claim or in the in the transaction, but also what it means for their business.

Announcer:

Stuart, I know you work with a number of General Counsels of multinational organizations, and you mentioned how hard it can be for them to have effective oversight of their subsidiaries around the world. Can you talk about this more and how they're managing related risk and compliance issues?

Stuart Fuller:

Yeah, so, this is again a very important area for an in-house team, particularly the in-house has the company secretarial role. So, all multinational clients, all global organizations have large, complicated group structures. They'll have their main entity, and then they'll have in some cases, up to thousands of operating and other subsidiaries and entities around the world, and that becomes a quite a complicated network, and quite a complicated problem for in-house teams to manage. Because you have a regulatory requirement to fulfill the annual corporate filings, the tax returns, the reporting, everything you need to do around a company. But you've also got the complexity of change, so if you have one change in a director of multiple companies, you need to make that across the multiple companies. So, I think you get an increasing complexity of organizations, you get an increasing complexity of regulatory requirements, and you've got the combination of scale and numbers of jurisdictions. So, that's where we see General Counsel and a number of teams saying, well, effectively, how can we manage this part of our business better? Is there a way of doing it other than having an internal team that does this in a relatively mechanical way, procedural way? Or is this a way that we can effectively outsource this to a third party? Such as KPMG Law, where we deliver that back to the to the client and the team through a managed service, and that managed service will always have a technology enablement piece so that you have one gateway between the client and us for the delivery of that service, you have a consistent way of doing things across multiple jurisdictions, and that's all technology enabled. So, that you do it once, and then have it scaled multiple times through the technology, and again that not only allows, sort of speed and efficiency, but it allows transparency and data in reporting. But we're

also seeing in this area that allows both our team and the and the in-house team to focus not only on the process and getting that right, which is fundamentally important, but then going into the more important areas around, is there a governance issue for us to consider here, is there an advisory piece around the corporate governance that we need to consider with those changes so that the General Counsel can actually focus on that substance of the management of the group, as well as the form of the management of the group?

Announcer:

Stuart, the final topic you raise is around this drive towards reimagining the legal function. What do you think is driving this need to transform?

Stuart Fuller:

Legal is experiencing now what many other functions in companies have experienced over the last 10 to 15 years, which is that the need to transform their operating model, and what we see here is not only this demand coming, which I'll talk about, but the fact that there's not really ever a one size fits all with re-imagining of a legal function. So, on the on the demand side and the pressure side, it's a combination of factors. It's effectively, the envelope of the budget that a General Counsel is given to manage the legal function, and that is often always a combination of the internal team cost and external counsel cost, and what we're increasingly seeing is the CEO or the CFO or the COO saying to the General Counsel "here's your envelope of funding, but that's going to be your funding amount in the future as well, but you're going to need to do more for that same amount, or sometimes more for less." But it's a real combination of more work with the same amount of funding, or more work with less funding. And what we're also seeing is the fact that legal technology is becoming more effective and efficient, particularly when it's built into a solution that you take to a client. So, it's actually an issue of diagnosing the problem and then looking at what technology can solve it, rather than saying let's buy this technology and use it to solve a problem. So, what we see in this area is our clients saying to us, well, the first step in this is let's understand really well what the legal team is doing, what the in-house team is doing.

So, we've developed the legal function assessment suite and a couple of other tools which allows in a very intuitive sense the General Counsel and their team, to give data just through a sort of automated or a Q&A process about what the legal team actually does because that gives the General Counsel and that team the transparency they need to work out what they're doing, how much time they're doing, and what could be done differently, what could be automated, what could be digitized what could be outsourced, what needs to be retained by the team.

The second thing you see around this is the need for technology. So, I've already commented that legal technology is becoming more efficient and effective, but of course, it's, in our view, it's technology which is embedded into the solution that you provide to the in-house team and through them to the organization that they serve, so that it helps deliver the solution, or it helps deliver the service in a more efficient and effective way, not simply putting in a piece of technology just for the sake of it. And then the third, and I think the third important area is, it moves into then the sort of basic function of contracting and managed legal services. So, what we see is a lot of clients wanting to put in contract lifecycle management so that you have ownership of the contract right through from initial contact with the counterparty, right through to execution and storage of the contract. And the commercial importance of that is in a joint study we did last year with the World Contracting Council; we quantified that 9 percent of the value of contracts is effectively lost through nonenforcement of service level standards. So simply having a contract life cycle management system delivers immediate value back to the organization.

And then lastly, I think where we will see this go pretty quickly is into a greater degree of managed legal services, where a

General Counsel team outsources particular parts of the work that they would do to a third party, which delivers it back with a technology enablement with good lawyering and a good process, and that allows the in-house team to focus on substantive and complex work. Whereas some of the other work is then delivered back through our managed legal service. So, these are all what we're seeing in this reimagining of the legal function. But you come back to the fundamental point is, it's actually got to be driven by what the client needs, so there's not a one size fits all solution.

Announcer:

So, Stuart, what are some of the organizations you work with doing? And, how is technology playing a part in this?

Stuart Fuller:

So, what we're seeing at the moment is sort of a drive around a couple of areas. One is coming back to legal technology. Is there a good solution for a problem? So not identify the technology and then find the problem for it to solve, but is there a problem that we need to solve in in how we do things? And is there a particular piece of legal tech that we can use to do that? Secondly, it is contract lifecycle management, so that system, that end-to-end system of contracting. So, whether that's procurement for the organization's own contracts or its third-party customer contracts. And then thirdly, managed legal services. So, in each of those areas, contract lifecycle management and managed legal services, the technology platform, and the technology solution that either automates or digitizes the contract, or the process is fundamental. The thing that's fundamental before you do that, is the need for good lawyers to input on that, because there's no point automating or digitizing a contract that's either out of date or doesn't work. So, the first step is how do I simplify, refine, redraft my contracts, so that I simplify them, make sure they're up to date, make sure they're fit for purpose, and then secondly, how do I automate or digitize them in a very clever way.

Announcer:

Stuart, we've covered a number of topics today, and you've definitely given our listeners a lot to think about. But to conclude, what recommendations would you like to leave our listeners with today?

Stuart Fuller:

I think there's two. So, I think what we're seeing in the market is a shift of both demand and of supply. So, what we're seeing is organizations and General Counsel being more open around the range of different providers that they consider for legal advice and legal services, but also a growing range of those providers. And of course, included in that is KPMG Law and Global Legal Services. And that is driving we think, a shift in the buying pattern of clients as they look to put a portfolio of providers together, and that is driving a fairly substantial shift in the legal industry, because it's moving away from just law firm industry or just a legal tech or law company industry into a whole range of different providers. The second, observation I'd make is it's the combination of talents and solutions you bring to clients, which is the key. So, in our view, you know you need to bring to a client an offering that's got good quality lawyers, which has a solution focused a mentality to the to the solutions that we bring to clients. And, as we've spoken about today, business reorganization, entity management, mass claims, all developed in a solution mindset. Thirdly, clever and effective use of technology in those solutions. So, it's not just lawyers doing more lawyering, but lawyers who are made more effective and efficient through technology, and which delivers a better experience for the client but also better data to the client. And lastly, you need global scale. The platform to deliver in more jurisdictions in a consistent, coordinated manner than others, because that means that managing global

organizations becomes our delivery to the client, not the clients issue to manage for us, and they're the sort of broad trends we're seeing.

Announcer:

That's great Stuart, thank you. It's been a fascinating discussion and you've given our listeners some really interesting insights.

Please join us again next time and also email us with any questions you have about today's episode at tax@kpmg.com. We'd also love to hear from you with any suggestions you have for future episodes.

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Thanks for listening.

Musical outro

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