

GENERAL COUNSEL SURVEY

The Evolving Role of Corporate Counsel in Ireland

COUNSEL, n. [L., to consult; to ask, to assail.]

Advice; opinion, or instruction, given upon request or otherwise, for directing the judgment or conduct of another; opinion given upon deliberation or consultation.

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PARTNERS

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MERC Partners

MERC Partners, founded in 1980, is a market leader in senior management and board recruitment, delivered through retained executive search and advertised selection services.

Pioneers of executive search in Ireland, the firm is proud of its blue-chip client portfolio, comprising many of the leading multinational, indigenous, semi-state and not-for-profit organisations. The MERC Partners brand has long been identified with integrity, discretion, expertise and successful delivery, enabling the firm's clients to gain a competitive edge through the quality of their senior management teams.

MERC Partners is the Irish member of IIC Partners, one of the world's top ten executive search firms, which provides the combination of one of the most recognised brands in Irish management recruitment with the depth of research, expertise and reach of a leading global organisation. With over 50 offices world-wide, our clients expect us to search internationally to identify and recruit the best management talent, regardless of whether that talent is "on the market" or not.

Legal recruitment

MERC Partners' legal practice is primarily focused on the recruitment of senior lawyers to work in-house in commerce and industry. Over the course of the past 28 years, we have developed an unrivalled understanding of what a business requires of its in-house counsel, and what it takes for a lawyer to succeed in such a varied and pressurised role.

Our legal recruitment practice is led by partner Simon Waddington, a law graduate from the University of Sheffield, who also studied at the College of Law in Chester. His early career was spent as a Legal Editor with a publishing company in London, before he moved into legal recruitment in the City in the early nineties. He joined MERC Partners in 1995, and has been a partner since 1999.

He has extensive experience of recruiting a wide variety of in-house counsel, from lawyers taking their first step from private practice into industry, to highly seasoned EMEA General Counsel. Clients for whom he has successfully recruited in-house counsel span most business sectors, to include financial services, pharmaceutical, consulting, food and drink, information technology (hardware and software), telecommunications, regulatory bodies, semi-state and professional services.

The evolving role of Corporate Counsel

The role of the corporate counsel in Irish business has undergone dramatic change in recent years. Once seen as simply the head of the internal legal department, whose primary responsibilities were to advise the company's management, prepare and approve documentation, while acting as a cost-effective "company policeperson", now the corporate counsel is regarded as an integral part of the senior management team.

General Counsel are proactive in providing guidance on commercial and ethical issues to their CEO and Board, identifying and addressing issues before they escalate. They must manage a range of stakeholder relationships which can reach far beyond the boundaries of their client (the company) to include investors, the public, even government.

More than ever, the General Counsel must understand the company's overall business, in order to identify and manage the multitude of commercial, legal, ethical, environmental, governance and compliance issues which routinely arrive at the General Counsel's desk. He or she is expected to wear multiple hats, and is a figure of critical importance to the CEO, the senior management team and the Board.

The recent era of corporate governance reform has led to an upsurge in advising and counselling directors on their duties, while also continuing to provide measured and objective legal guidance, in addition to making a contribution to the vision of the business. Management and leadership abilities count for much.

MERC Partners' General Counsel survey

In response to this transformation of the role, and the fact that there is now a core group of General Counsel which did not exist in depth in the Irish market until reasonably recently, we decided to undertake a survey to discuss with corporate counsel their perspective on how their role has changed; what the business now expects from them; what pressures and challenges particularly affect them; what they look for from their external lawyers; and how they should interplay with the Board. We also looked at other areas of relevance to General Counsel, to include remuneration and reporting lines.

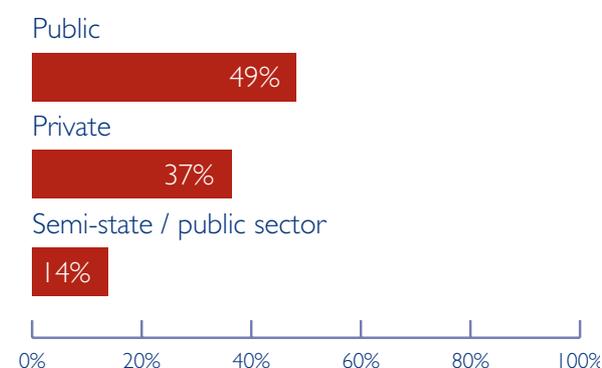
Criteria and Methodology

A group of 44 senior in-house lawyers was identified and invited to participate in the survey. Each participant has responsibility for the strategic and operational management of the legal function for their organisation, and provides guidance and support on legal and commercial matters to the executive team and / or Board.

Simon Waddington conducted a series of in-depth, face-to-face interviews of up to ninety minutes' duration with each participant.

Survey Population

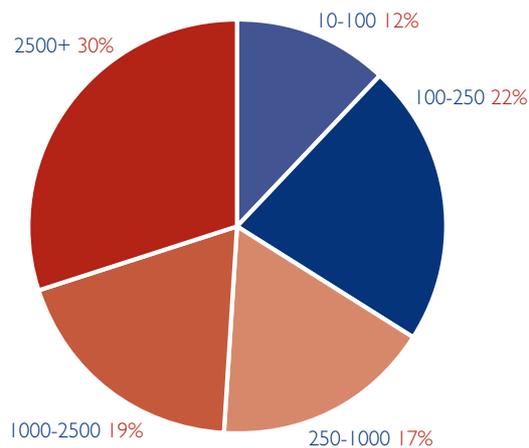
The status and ownership of the companies in which participants work are illustrated below:



Representation by sector



Numbers employed by organisations in which the participating General Counsel are employed:



Profile of participating General Counsel

Length of experience as in-house counsel

Of the group which participated in the survey, the least experienced participant had worked for one year as in-house counsel, and the most experienced had worked for 24 years in such a position.

The average duration as an in-house lawyer across the group surveyed is 10.6 years.

Reporting lines

The diversity of organisations and sectors considered is reflected in the variety of reporting lines across the surveyed group.

The positions into which the General Counsel report are broken down as follows:

CEO / MD

52%

Global Head of Legal

13%

CFO / FD

13%

EMEA Head of Legal

9%

MD of EMEA region

5%

Company Secretary

4%

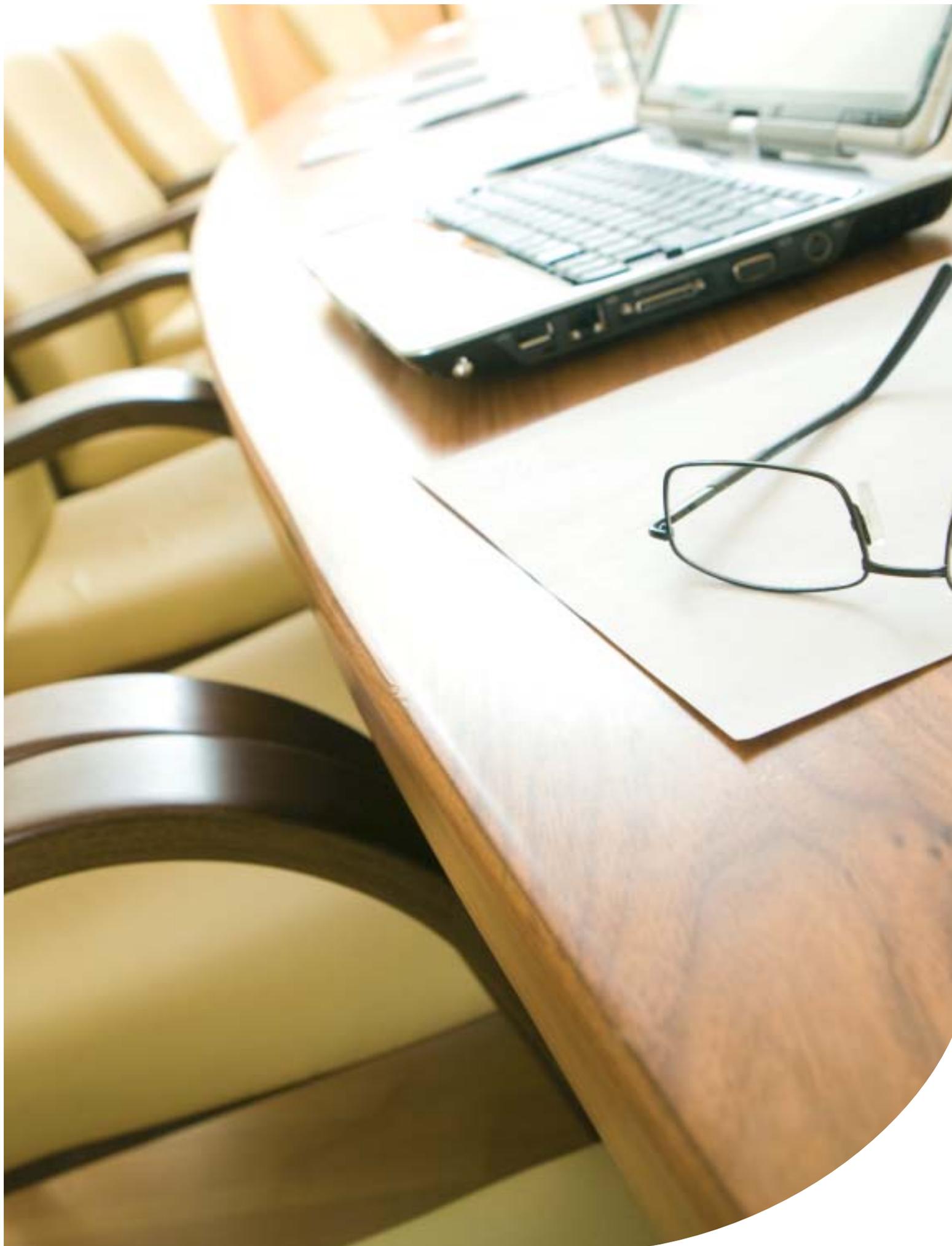
Board

4%



Reporting teams

The average number of lawyers in the teams reporting into the General Counsel group is 4.04.



1) In which ways has the role of General Counsel changed in the past five years?

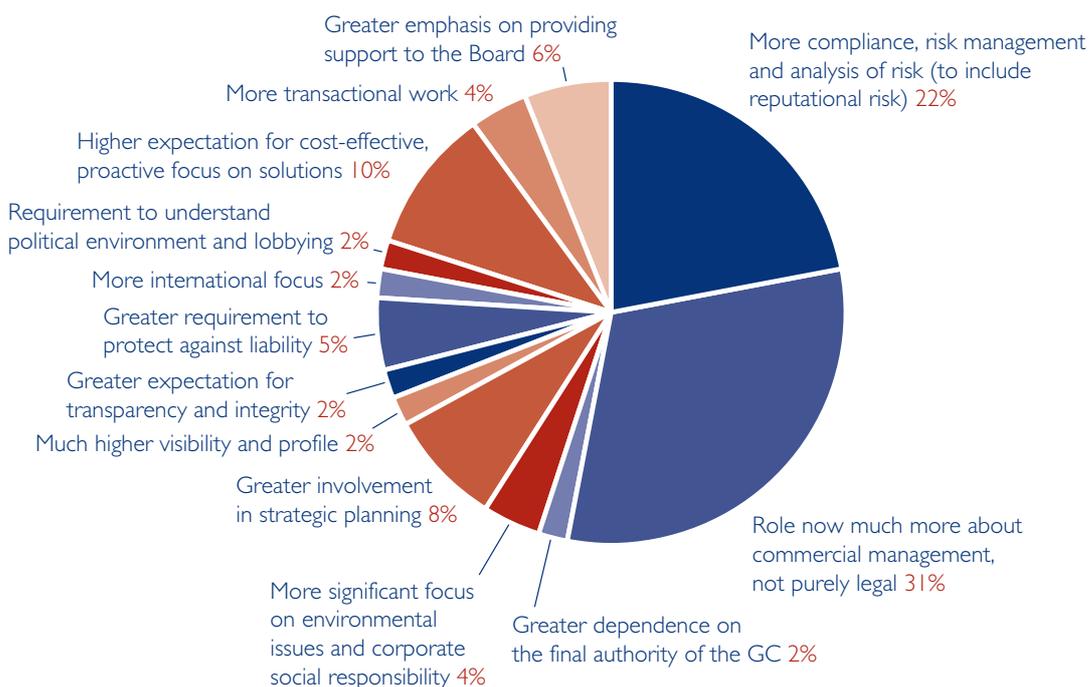
All of those interviewed felt that the role of General Counsel in Irish business has undergone dramatic change in recent years.

In many cases, the view was expressed that the transformation of the function was a reflection of how the General Counsel has become more important to the business. The function is now much more integrated into the decision-making process. Management needs have become more challenging, and more diverse. In some cases, there has also been a significant increase of reliance from the Board: phrases used to describe the relationship included “best friend to the Board”; “trusted advisor”; and “strategic counsellor”.

It is now the case that strategic input, planning and advice are inevitably sought at the inception of a deal or initiative, and the General Counsel is expected to operate as a senior commercial manager and business partner, as much as a legal expert. The old-style approach towards a General Counsel as the company’s policeperson is now long gone -

those interviewed are expected to demonstrate a focus on the provision of solutions. Their senior management colleagues expect them to explain not why a course of action cannot be taken, but rather how an alternative course can facilitate what they want to achieve.

At the same time, the business environment, both at home and internationally, has become more demanding, particularly from a regulatory perspective. Those participants whose businesses have significant interests in the U.S. in particular reported a marked increase in litigiousness. A slew of high-profile falls from grace have fostered a keener understanding in senior executives that a failure in compliance can have serious personal implications, which has led in turn to a greater reliance on their General Counsel. A greater emphasis on risk management, to include the management of potential reputational risk to an organisation, was reported. There is also a greater expectation to run the legal department in a more responsive, smarter, more efficient, more cost effective fashion. At the same time, most participants reported an increase in the volume of transactions and subsequent workload.



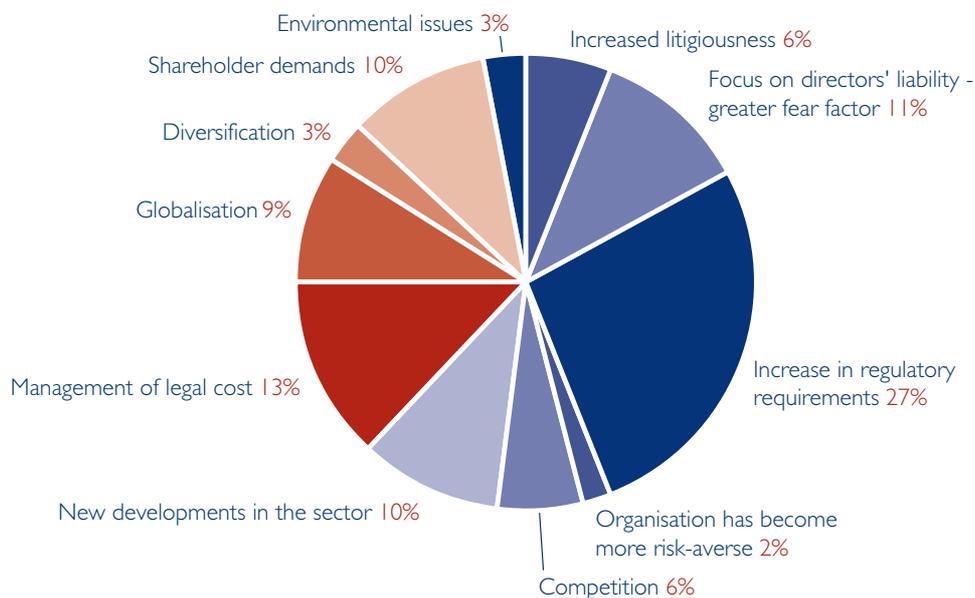
2) What is driving such change?

The changes referred to are being driven by factors in the external business environment, and also within the various organisations.

Changes in legislation and the emphasis placed on corporate governance in recent years have played a significant part in driving the changes to the role of the General Counsel. Several commented that issues such as unlimited liability and corporate manslaughter have “focused the minds” at the most senior levels, leading to a greater reliance on the guidance of in-house counsel. Globalisation has been significant: those organisations which have expanded into new markets have inevitably found themselves facing a widening burden of multi-jurisdictional regulatory, commercial and competition issues. In addition, particularly where the General Counsel is operating in a company with extensive international interests, an increased awareness of environmental and human rights issues has contributed.

Issues internal to the company which have been important include a stronger desire to avoid litigation, which can be so damaging to the organisation’s reputation, and - in some cases - heightened shareholder expectation. The greater awareness at the level of the senior management team to the legal threats to the business has played a part.

It should be noted that several of those interviewed felt that they had, at least in part, been personally responsible for driving the change in how the General Counsel is regarded in their organisation, fuelled by a drive to make a significant, hands-on personal contribution to the commercial management of the business.







3) What are your MD's top three expectations from you as corporate counsel?

Unsurprisingly, the demands and expectations of each participant's MD varied considerably, based on the style of, and challenges facing, each MD. However, some common threads emerged.

Technical and professional expertise was assumed as "a given". However, the manner of delivery of that expertise was seen as important: MDs expect their senior lawyers to provide advice and guidance decisively, strategically and speedily, with an emphasis on how a solution can be found to a problem.

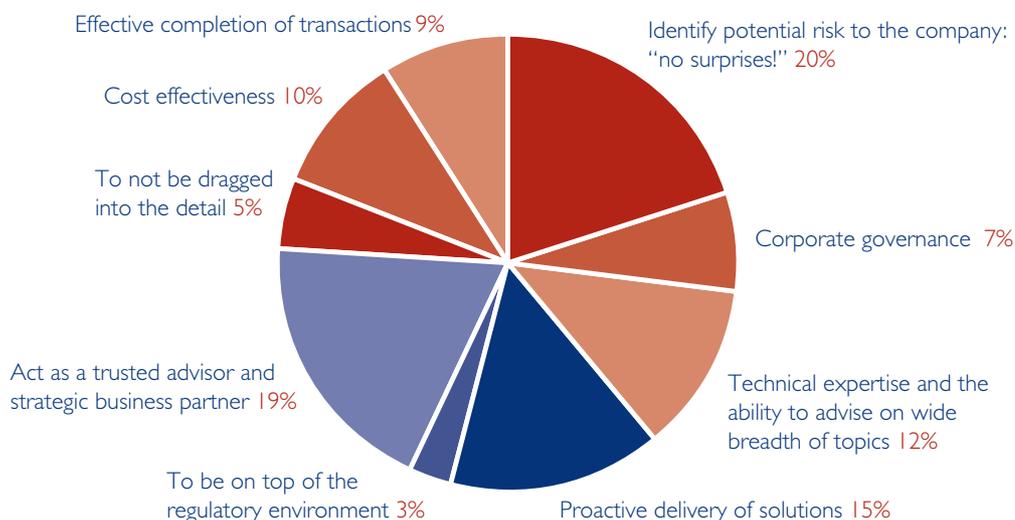
Objective advice, which goes beyond the pure legal, is demanded, allied to the robustness and independence needed to deliver what might be unpalatable news. A common response was that MDs want "no surprises", along with the ability to anticipate problems and to act as "an early warning system".

Responsiveness was expected: MDs expect to be able to reach their General Counsel 24 hours a day, seven days a week.

There is an expectation that adequate resources are in place to manage legal issues properly as they arise, and that the relationship with external legal advisors, as well as the in-house legal team, is being managed in a cost-effective and efficient fashion.

MDs rely on their corporate counsel to ensure that the business is compliant with legislation and regulations, while also contributing to the broader business agenda. When an event or disaster occurs, the General Counsel must move quickly to implement damage limitation plans.

MDs expect successful outcomes - which can be defined by a range of criteria, not just simply "winning cases". Successful execution is expected in transactions, acquisitions, risk management and contribution to the company.

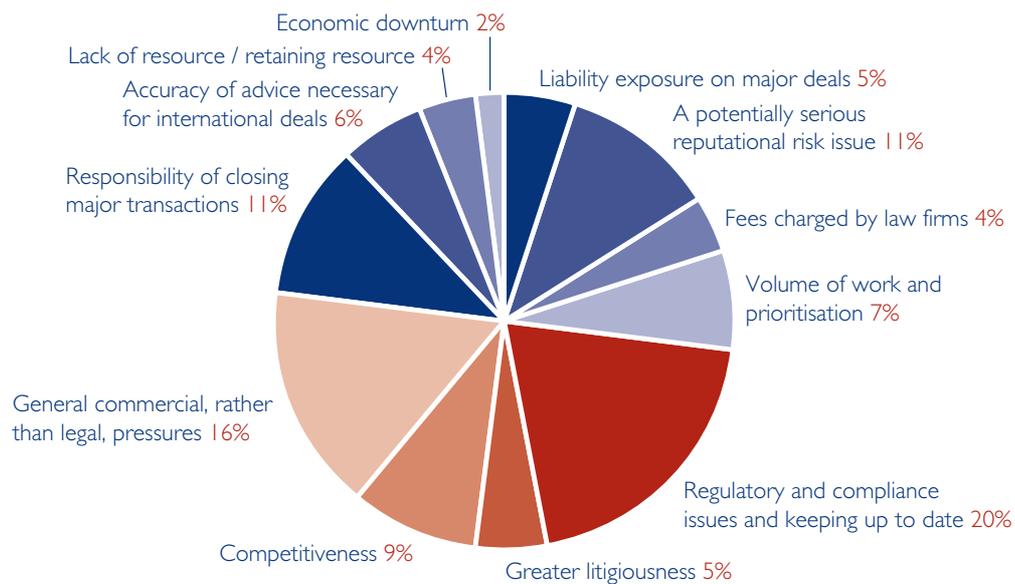


4) What are the business issues most likely to keep you awake at night?

We were interested to understand which issues prey most on the minds of the General Counsel, as he/she juggles the diverse demands of their position.

Most reported wryly that they slept soundly, but again certain trends emerged across the participating group, reflecting pressures of a broader commercial, as well as legal, nature.

Issues included: threat to market share; competition issues; threat of a recession; the management and closure of major projects on an ongoing basis; fees charged by law firms; and managing a huge volume of work when sometimes under-resourced.



Regulatory and potentially high-profile reputational threats to the company arose as a particularly common theme, as did trying to keep abreast of industry-specific and legislative developments, both nationally and in other jurisdictions.

Team management also featured: the desire to ensure that team members were properly supported, mentored and developed emerged as important.

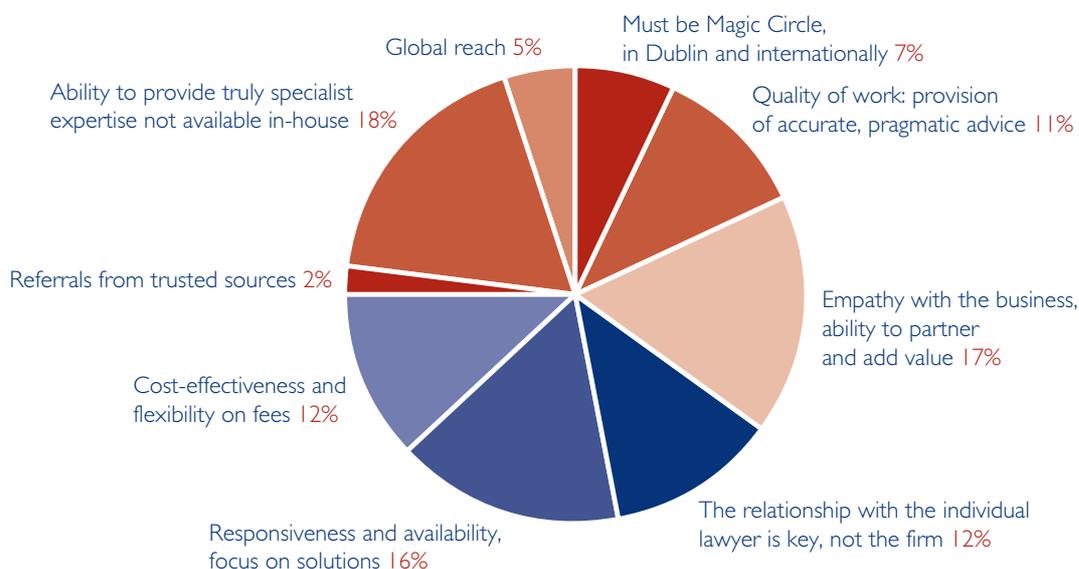
5) What are the criteria by which external lawyers are selected?

The relationship with a particular person, rather than with a “big name” law firm, was of critical importance, based on quality of service and client care. Several partners were mentioned by name as having an exceptional grasp of, and empathy with, the business in question, and this experienced understanding was seen as absolutely critical.

The ability to provide genuine expertise in areas not covered by the in-house legal team was important, as was an expectation that the external lawyers would act with the team’s best interests at heart, while acting as business partners. An understanding of the rules of engagement and lines of accountability was also described as important.

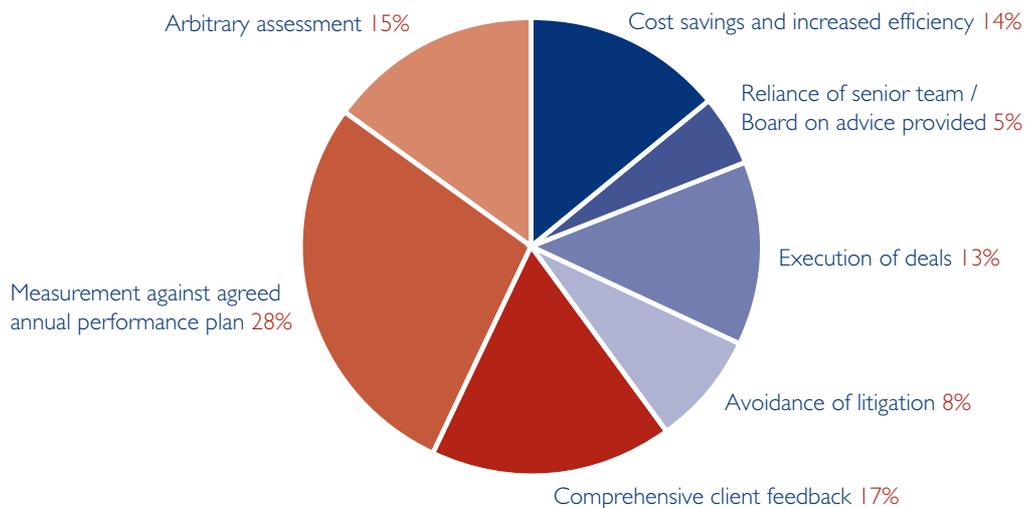
Global reach was seen by some as absolutely critical. Although many organisations required their law firms to be in the “Magic Circle” bracket, whether in Ireland, the U.K. or the U.S., others preferred the more personal touch of certain niche or boutique practices. The provision of real expertise was the overriding factor. In all cases, pragmatism, responsiveness and availability were simply assumed.

Value for money is an issue: several participants would be influenced by a law firm’s openness to the use of significant discounts, a cap on fees, or fixed fee arrangements.



6) By which metrics is your performance measured?

While some organisations have developed quite sophisticated systems to measure the performance of their General Counsel and his/her team against set business objectives agreed in advance, in other cases performance appraisal at this senior level is less formal and somewhat ad hoc.



Criteria on which performance is measured include the following: feedback from management peer group, functional heads of the business and stakeholders; provision of commercial, rather than purely legal, advice; management of the legal function and its interaction with the broader business; effectiveness of mentoring and management of the reporting team; cost savings and increased efficiency; successful delivery of projects; “big wins” concerning transactions and litigation; and compatibility with company values.

The view was expressed on several occasions that it can be difficult to appraise performance adequately at the level of the General Counsel in a truly objective manner, particularly when the appraisal is being made by a non-lawyer.



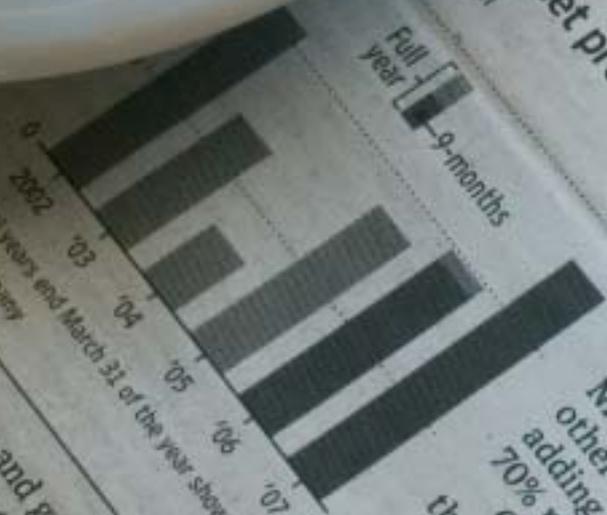


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Exceeds target

endo's net profit
ms of yen

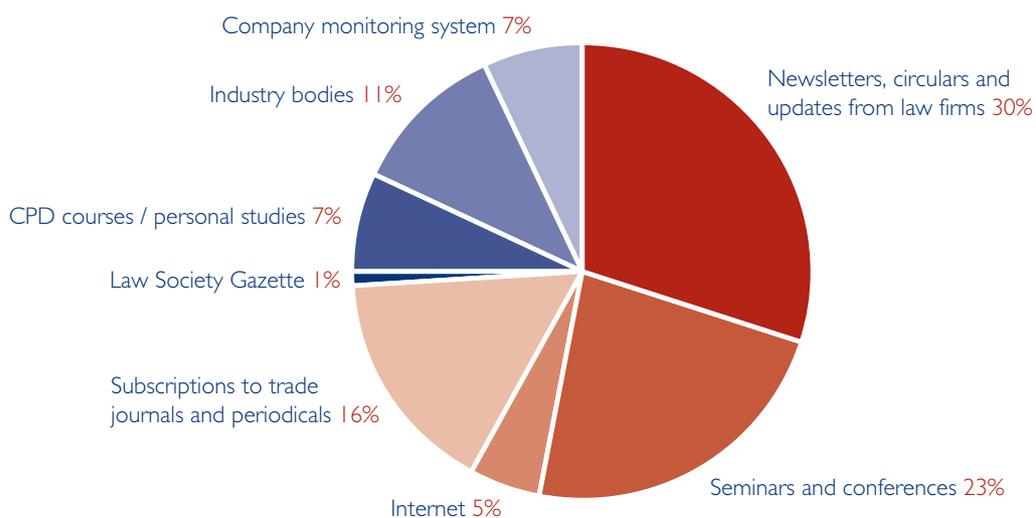


a net 3.19 million consoles, putting it well on its way to its target of six million by the end of March. An important part of this strategy, analysts say, is that its games are more profitable than those of Nintendo DS is 1/10 the cost of other platforms," said Mr. Gibson adding that such software has 70% profit margin. Game manufacturers often counting on economies of scale in their consoles at a profit game revenue for profit already is at a level even on its Wii hardware for the "Sony will have a separate hardware for the according to Separate hardware for the

7) How do you keep informed about developing trends?

One of the more pressing demands on General Counsel is the requirement to keep themselves fully up to speed on the myriad of legal, regulatory and commercial developments impacting their businesses, both at home and internationally. The time available to do so is limited.

There is therefore a reliance on proactive, value-adding advice from their external law firms, which regard its provision as a useful tool for deepening the client relationship. Mailings, webcasts and updates are regarded as highly valuable, as are conferences, seminars and breakfast briefings, where workload allows attendance.

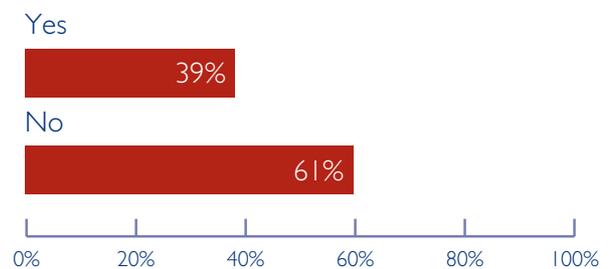


Other useful means of keeping abreast include: insights provided by membership of corporate counsel associations; briefings by the Institute of Directors; legal and industry-specific publications and related online services; updates from the Law Society, regulators and from the European Law Firms Association; learning gained from continuous professional development; comprehensive company monitoring systems; the internet; and personal study.

8) Should the General Counsel be a member of the Board?

The question of whether the General Counsel should participate as a Board member split the participating group, as illustrated in the graph below.

Those in the “yes camp” felt that membership was important, enabling visibility of all relevant issues coming over the horizon and likely to impact the business. The argument was made that presence on the Board would influence the driving of a watertight ethical position from the very top of an organisation. Those in favour did not feel that the corporate counsel would be necessarily conflicted, as there is always the potential for conflict to arise as an executive of the business in any event. This was seen as a management issue, not a legal issue. Where potential for conflict is identified, it was felt that seeking external counsel’s opinion would resolve the difficulty.



Those who argued against membership of the Board felt that the lawyer’s fiduciary duties to the company and its shareholders could be placed in a position of conflict. The view was expressed by some contributors that, if not a Board member, the General Counsel should nevertheless be a member of the executive committee. Some of the contributors commented that they are somewhat perturbed by what they see as a definite trend towards the General Counsel increasingly sitting on the Board.



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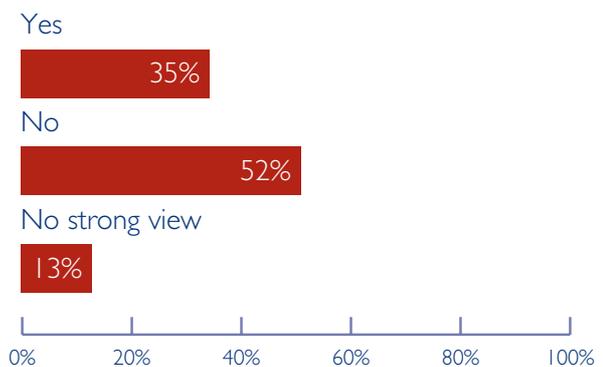
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9) Should the roles of General Counsel and Company Secretary be split?

Like the question of whether the General Counsel should sit on the board, the participating group was split by this question, although it has to be said that the same strength of feeling was not generated by the issue.

Those who felt that the roles should not be separated felt that there was an obvious link between the functions. The argument was expressed that the General Counsel was best placed to perform the role for compliance-related reasons, in the absence of a dedicated Company Secretary.

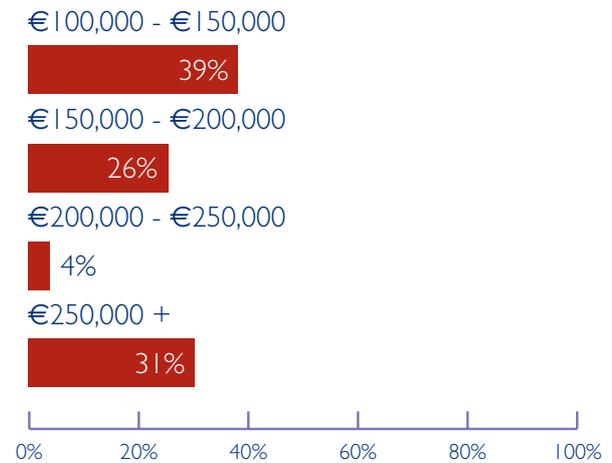


The main reason for splitting the roles, it was argued, was based on volume of workload, and a general view that the fulfilment of company secretarial duties was not an effective use of the General Counsel's time, particularly given ever-increasing corporate governance responsibilities.

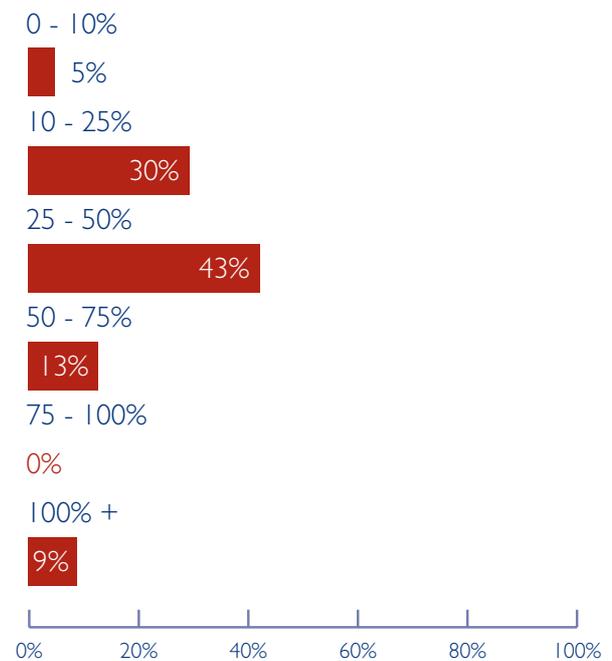
10) Remuneration

Remuneration packages varied significantly among the participating group, influenced by the size, status and ownership of the company in which each General Counsel works. The range of cash remuneration (base salary and performance-related bonus) is detailed below. Stock, options and other benefits have not been included.

Base salary



Indicative bonus



10) Miscellaneous

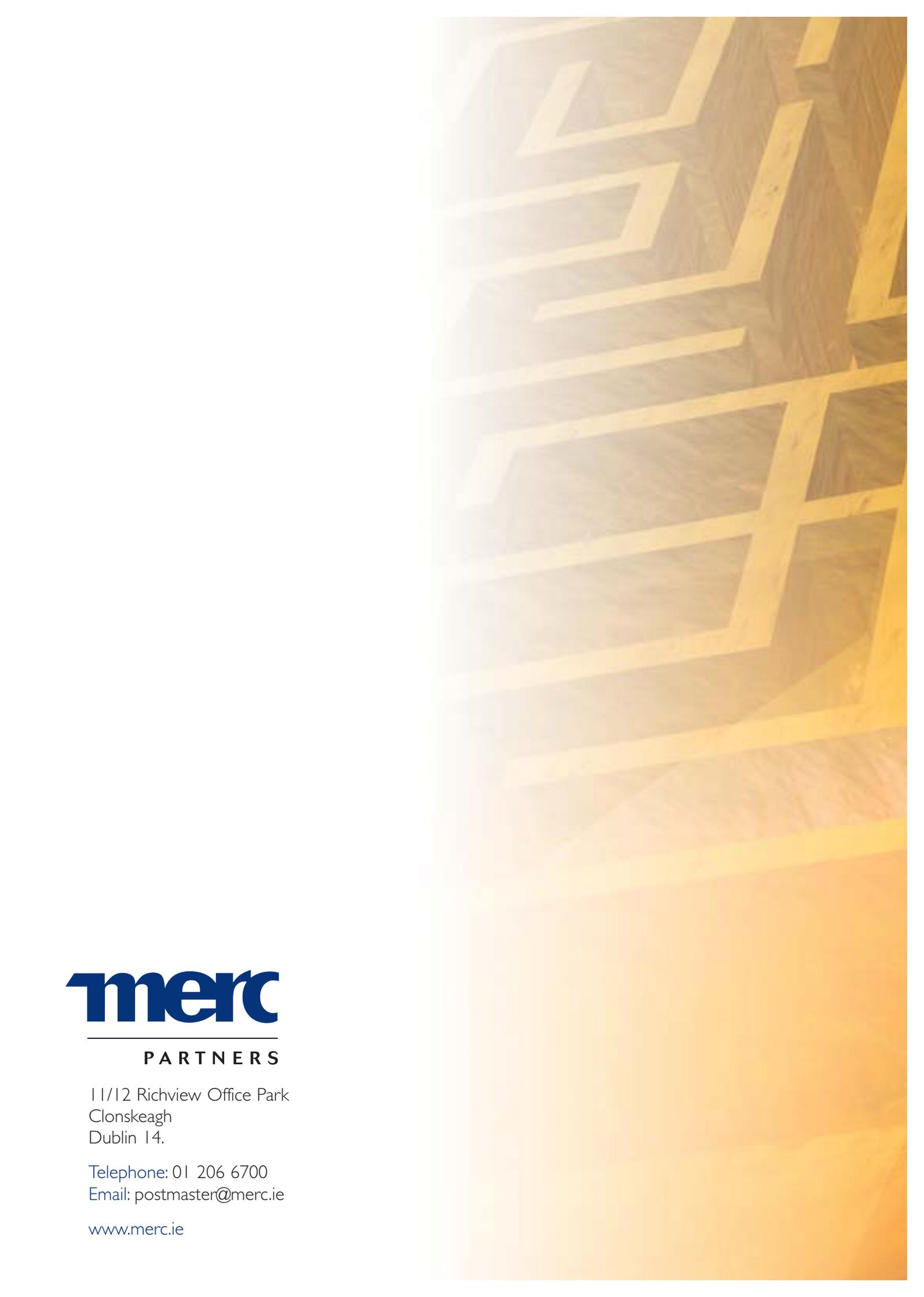
Through the course of the discussions, a number of other topics arose, which did not fit comfortably under the preceding headings, but which were nonetheless regarded as important to the group which contributed to this survey.

Of particular note were the following:

- Lawyers in industry lack a voice among the broader profession: there is no representative body, no credible forum to exchange views and no tailored training.
- Some expressed a sense of professional isolation: the view was expressed that the Law Society does not provide support to the in-house community.
- As in-house lawyers become more integrated into the businesses in which they operate, it is increasingly challenging to find any semblance of work/life balance.
- Positive influences are being brought to bear on the in-house legal community in Ireland by the influx of overseas-qualified lawyers.

Acknowledgement

MERC Partners would like to thank the General Counsel group who took time from their busy schedules to participate in this survey. By sharing their personal and professional insights, they have contributed to an area of knowledge which, in our view, has been under-researched in an Irish context.



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