



A GUIDE FOR  
IN-HOUSE SOLICITORS  
EMPLOYED IN THE  
CORPORATE AND  
PUBLIC SECTORS

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## PRESIDENT'S FOREWORD

I would like to thank the In-house and Public Sector Committee for the work that has gone into this fifth edition of *A Guide for In-house Solicitors Employed in the Corporate and Public Sectors*.

By way of background, the committee was formed by the Society in recognition of the different perspectives and requirements of in-house solicitors – that is, those who work as solicitors outside of private practice in the public and private sectors, while still bound by the same professional and ethical standards that apply to solicitors in private practice. The committee aims to represent the views and promote the interests of in-house solicitors and helps to support the Law Society in the exercise of its representative, educational and regulatory roles as they relate to the in-house sector.

To work as an in-house solicitor in Ireland today is an ever-changing, challenging and exciting experience. As the Irish economy recovers and evolves, the in-house sector has developed and expanded significantly. In fact, at the time of writing, in-house solicitors in the private and public sectors comprise approximately 17% of practising certificate holders.

The Society is very aware of the need to provide supports to this important segment of the profession. Working with the committee, we have undertaken a long-term project to identify key issues and trends affecting in-house solicitors so that we can meet your needs and promote the value of in-house solicitors for both public-sector and private-sector organisations. Working with the committee and the market research firm RED C, we gathered information about the important aspects of your organisations and your work, the issues you face, and the types of supports you would like the Law Society to provide. Using this information, we created a multi-year action plan to implement steps to support the sector.

The committee strives to promote collegiality and the forming of connections between in-house solicitors and to build upon and strengthen their relationship with the Law Society. The committee assists with the organisation of training tailored to in-house solicitors. The committee also represents the Law Society at European Company Lawyers Association (ECLA) general assemblies. It provides guidance to in-house solicitors on an *ad hoc* basis in response to individual queries and seeks to effectively communicate with in-house solicitors through articles in the *Gazette* and the *eZine* and through the committee's section on the Law Society website, [www.lawsociety.ie](http://www.lawsociety.ie).

The in-house solicitor may have a multiplicity of roles in an organisation depending on the circumstances – for example, legal advisor, business support, and company secretarial. In recognising that, this guide makes reference to the practical issues that may confront the in-house solicitor in fulfilling his/her duties, such as instructing external legal advisors, professional practice issues that may be encountered, as well as support services available to the solicitors' profession.

This guide will provide both prospective and existing in-house solicitors with key information. If there is a matter of interest or concern to you that you would like to raise with the committee, please contact the committee's secretary, Louise Campbell, Law Society of Ireland, Blackhall Place, Dublin 7; tel: 01 881 5712, email: [l.campbell@lawsociety.ie](mailto:l.campbell@lawsociety.ie).

MICHAEL QUINLAN  
President, May 2018

The information contained in this booklet is intended as a guide only and is not a substitute for professional advice. No responsibility is accepted for any errors or omissions, howsoever arising.

The Law Society's Practice Regulation Section has produced the *Regulatory Guide for In-house Solicitors Employed in the Corporate and Public Sectors*, available on the Society's website. They provide guidance in these regulatory matters and can be contacted at [pc@lawsociety.ie](mailto:pc@lawsociety.ie).

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A young man with short brown hair and a light beard is smiling broadly while talking on a white smartphone held to his right ear. He is wearing a dark blue suit jacket over a light blue dress shirt and a dark tie. In his left hand, he holds a white disposable coffee cup with a black lid. The background is a blurred outdoor setting with trees and buildings, suggesting a city street. The overall mood is professional and positive.

# CHAPTER 1

## INTRODUCTION

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## DIVERSITY OF ROLES

The role of the in-house solicitor working outside private practice continues to develop and evolve. An ever-widening range of organisations, including public and semi-state bodies, regulators, and commercial enterprises in a wide range of industries – such as information communication and telecoms (ICT), pharmaceutical, credit, financial institutions and consultancy firms – all benefit from the specialist legal skills that an in-house solicitor can offer to the organisation. At the time of writing, in-house solicitors in the private and public sectors comprise approximately 17% of practising certificate holders.

The in-house solicitor will have one client – his/her employer based on his/her contract of employment – but will also have many emanations of that client drawn from the various functions operating within that organisation or within various affiliates or subsidiaries, which may operate across multiple locations or territories. The role of the in-house solicitor is to provide and implement legal advice and best practice, to play a central part in an organisation’s corporate governance infrastructure, and ideally to act as a trusted advisor or strategic partner in the organisation. Due to the multifaceted nature of the in-house solicitor’s role, at certain times the technical legal content of the day-to-day job may be less of a focus for the in-house solicitor than for solicitors working in private practice. However, in all cases, the independence of the in-house solicitor is of critical importance in dealing with the inevitable pressures and potential conflicts of interest that arise as part of the day-to-day professional life within his/her organisation, which is addressed in more detail in Chapter 4.

In order to be effective, the in-house solicitor will also need to be able to wear multiple ‘hats’, depending on the circumstances, as set out in the following diagram.





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The sections below provide examples of some of the diverse roles that in-house solicitors can play within their organisations in the corporate and public sectors. Throughout this booklet, we also provide some guidance on ways to identify and deal with the opportunities and challenges that these roles bring.

### THE SOLICITOR IN A LAW/LEGAL FUNCTION

Many large organisations in the private sector (such as financial institutions) or in the public sector (for example, the Chief State Solicitor's Office), semi-state organisations, regulatory authorities, and some local authorities, have dedicated legal functions to handle all legal business and to take charge of managing legal risk in-house. Depending on the size of the organisation, there could be several in-house solicitors or other legally qualified personnel employed for this purpose under the supervision of a 'head of legal'. The job titles of these in-house solicitors may vary and include, for instance, 'in-house solicitor', 'legal counsel', 'company solicitor', 'law agent', 'legal advisor', 'general counsel' etc. A legal services function of this nature may be run along similar lines to a firm of solicitors in private practice, with individual areas of responsibility being allocated to individual team members (solicitors and legal executives) depending on their background and experience. Additionally, the reporting lines of the in-house solicitor may vary depending on the nature and structure of the organisation, with some solicitors reporting directly to a managing director (MD), chief financial officer (CFO) or chief executive officer (CEO) within Ireland or, in the case of multinational organisations, to a centralised group function based outside Ireland (and with various alternative structures in between).

In larger public-sector organisations, the responsibilities of a legal services function may often follow a traditional model of litigation, conveyancing and commercial divisions, although some organisations, such as those in the utilities sector, may have sector-specific legal service requirements that need to be provided outside of this traditional model.

However, depending on the nature and structure of an organisation, it may not have the necessary critical mass to justify the establishment of a multi-staffed in-house legal function, and it may rely instead on a sole in-house solicitor, or a small number of them, who may have to engage external legal counsel for some of the organisation's legal services due to a limit on resources, capacity or expertise. This will be discussed in greater detail in Chapter 3. The in-house solicitor here (and in larger entities) can realistically be expected and required to provide services in a wider variety of different disciplines and functions but, regardless of the nature or structure of the organisation, it is generally the case that the in-house solicitor will be the first port of call for all legal matters affecting the organisation.

Additionally, for some organisations, the majority of the legal function's work may also be of a

multi-jurisdictional nature involving, for example, compliance and regulatory work, setting up and management of companies or branches or representative offices, registration of intellectual property rights, or conclusion of commercial agreements with local entities in certain international locations. Hence, there may be an ongoing need to liaise with affiliate companies located in individual jurisdictions and, where necessary, to instruct local external legal counsel.

### THE IN-HOUSE SOLICITOR AS LEGAL COMPLIANCE OFFICER

Organisations will often employ a solicitor to provide legal compliance advice and/or to manage the legal compliance function (sometimes as legal compliance officer) for its business and projects to ensure the organisation is only acting within the framework of applicable legislation, as well as its policies, charter or constitution. Therefore, a system may be put in place to advise and monitor whether proposed projects and actions by the organisation are permitted within this formal compliance framework and to manage these projects and actions to ensure their continued compliance.

The involvement of the in-house solicitor in the legal compliance function continues to expand, with many in-house solicitors having responsibility for risk management, anti-bribery/corruption, anti-money-laundering, and data protection compliance. Compliance with data protection requirements, for example, has developed in recent years and will continue to develop, with the role of data protection officer now developing as separate from that of legal compliance officer. These areas have their own further responsibilities and obligations, and the in-house solicitor must take steps to be aware of those separate requirements, which continue to expand, especially following the adoption of new legislation such as the *General Data Protection Regulation*.

### THE IN-HOUSE SOLICITOR AS COMPANY DIRECTOR OR PENSION TRUSTEE

An invitation to join the board of the employer or of a client company, or as a trustee of the employer's pension plan, may arise during a solicitor's career, and this step should be considered carefully having regard to the professional and statutory duties owed as a solicitor to that company and the obligations arising under company law (in particular, the broader expansion and codification of duties under the *Companies Act 2014*) and pensions law. The In-house and Public Sector Committee has written *Gazette* articles on these topics that offer some further insight – '[Should you serve on the board if asked?](#)' (March 2017, p13) and '[An invitation to serve](#)' (Aug/Sept 2017, p28). This is addressed further in Chapter 2.

### THE IN-HOUSE SOLICITOR AS COMPANY SECRETARY

As part of his/her job description, in-house solicitors may also be expected to perform the duties of a company secretary for their employing company and/or other group companies. This is further addressed in Chapter 2.

### THE IN-HOUSE SOLICITOR WORKING IN A REGULATORY ROLE

Outside of certain specific compliance or regulatory roles (for example, acting as a data protection officer or pension trustee), it is now becoming increasingly common for regulators in the public sector, such as the Central Bank, the Department of Business, Enterprise and Innovation, the Office of the Data Protection Commissioner, the Competition and Consumer Protection Commission or the Commission for Communications Regulation (ComReg), among others, to employ one or more in-house solicitors for advice on regulatory matters. Equally, private organisations in regulated

industries such as financial services or pharmaceuticals may have roles for in-house solicitors as part of their regulatory teams and to engage with the various State regulators. Regulatory work typically calls for interpretation of legislation as well as case law, and so there is a general recognition that the technical skills of in-house solicitors are of real value to organisations in the regulatory context. This clearly offers an in-house solicitor working in this area the opportunity to specialise and gain experience and to contribute towards identifying and developing policies and processes, which will make him/her attractive to current and future employers.

### THE IN-HOUSE SOLICITOR AS CONSULTANT TO THE ORGANISATION'S CUSTOMERS/ CLIENTS

The in-house solicitor as consultant to an organisation's own clients is another specific role. Where an organisation provides professional services to clients (often for a separate fee), the in-house solicitor may be employed to deliver these services to the employer's clients in the capacity of a specialist consultant or advisor. The consultant's services will typically involve technical expertise, although he/she will not establish a solicitor/client relationship with the organisation's client. The in-house solicitor is prohibited under primary legislation from providing any services of a legal or financial nature to the organisation's client, as these constitute provision of legal services to a third party that is not the in-house solicitor's employer, and the in-house solicitor cannot act as a solicitor when providing the non-legal or non-financial services to the organisation's client.

Care is needed when in-house solicitors decide to take on this role. For example, where transactions in which they are involved require the input of a solicitor acting on behalf of the customer – such as conveyancing or litigation – they should advise the organisation's client to retain a firm of independent solicitors for this work.

To avoid confusion, it is recommended that the word 'solicitor' is not part of the formal role or job title of the person when providing such services, so that there is no possibility that the organisation's clients would believe that the in-house solicitor consultant was acting as their solicitor. For further information, please also consult the Law Society's [Regulatory Guide for In-house Solicitors Employed in the Corporate and Public Sectors](#).

### THE IN-HOUSE SOLICITOR IN A NON-LEGAL OR QUASI-LEGAL ROLE

Often solicitors in organisations will also have a role in, or be concerned primarily with, non-legal functions in that organisation, such as management, marketing or administration, public affairs and operational matters. This grouping includes:

- 1) Those whose role and remit expands over time to include these further areas,
- 2) Those who are initially recruited as legal professionals and subsequently move upwards or sideways within organisations, and
- 3) Solicitors who are employed in the first place in a non-legal capacity, often because of the excellent transferable skills they acquired and developed during their legal training and previous professional experience in the course of their employment and in ongoing continuous professional development (CPD).

In many instances, these roles or responsibilities can play a key part in helping the in-house solicitor to develop managerial, administration, and leadership skills and the knowledge and experience

necessary to progress in an organisation and to establish themselves as a trusted advisor.

Where a solicitor is employed purely in a non-legal role, it is suggested that the solicitor ensure that the employer understands that, when legal issues arise, such issues should be referred to an outside legal advisor or some other person who has been employed in-house in a legal capacity. It may be of assistance, in the context of clear demarcation of roles, to inform the employer that legal professional privilege would not apply to any advice given by a non-practising solicitor who is employed in a non-legal role.

The topic of privilege and the requirement for legal services to only be provided by a practising solicitor will be explored in more detail in Chapter 4.

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## APPLYING FOR AN IN-HOUSE POSITION

If you are considering applying for an in-house solicitor position, it is advisable to obtain as much information as possible about the employer, the role, the job requirements, and the terms and conditions of employment. This will allow you to assess the employer and its understanding and support for the in-house legal function. This in turn will help you decide the extent to which the position and the in-house legal function is 'set up for success'.





## CHAPTER 2

### YOUR ROLE

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The following checklists may be helpful in assessing the position and, although generally phrased in the context of the private sector, they are equally applicable to roles in State bodies and the public sector:

### 1. THE EMPLOYER

- What is the exact identity of the employer? Is it one company, several companies, or a group of associated companies? If it is in the public sector, which government function, agency or authority is it and, if a State body, under which government function's aegis does it fall, or is it an independent State body?
- Is the employer part of a multinational group, foreign or domestic? If it is the former, what are its reasons for establishing its operation in Ireland (for instance, EU market access, grants, tax breaks, standard of education and/or the potential pool of available employees, language) and what are its short/medium/long-term plans for or commitment to its Irish operation?
- What is the company's trading record in Ireland and worldwide? Is a copy of the last annual report or other relevant information about its activities and financial performance available?
- What is the management structure in the Irish operation and worldwide? If the employer is part of a multinational organisation, are its budget, policies and business plan dictated by head office or are they devised by local management? In this context, it will be important for you to understand the degree of autonomy and independence that you will have in carrying out your role as a legal advisor to the local business and the degree to which you will be expected to refer to other legal staff (for example, based at headquarters) before advising your local client organisation.
- Is the employer's operation 'greenfield' or well-established? If greenfield, will you be expected to become involved in establishing the office (for example, buying office supplies and furniture, hiring staff, and marketing)?

### 2. THE LEGAL FUNCTION

- Does the employer already have a legal function? If so, how is it organised – for example, is it a separate legal function, is there a central 'general counsel' role with embedded legal advisors in the various functions, companies or divisions of the organisation?
- If there is no existing legal function, why has the employer decided to set up a legal function at this time? Will you be required to establish the role and/or function and what level of autonomy and support will you be given (in terms of resourcing, budget, access to senior leadership etc)?
- Does the employer have legal functions in other countries? What is the relationship between these and the Irish function?
- What role does external counsel currently play in the provision of legal services? The relationship of the in-house solicitor with external counsel is considered further in Chapter 3.



### 3. ROLE DESCRIPTION AND JOB REQUIREMENTS

- Does the employer have a detailed job description for the role? Does this indicate awareness on the employer's part of the level of experience required?
- Will you be acting purely as a legal advisor or will you also be expected to play a greater role in management and commercial/policy decision-making? Will you be expected to publicly represent or lobby on behalf of your organisation?
- Where the organisation operates within a defined hierarchical structure, will you have management or equivalent status?
- Do you have the necessary qualifications and experience for the job?
- What areas of the law will you be expected to advise on?
- With what parts of the organisation will you be working and how frequently – board of directors, finance function, management, sales (in the private sector) etc? What will your relationship with them be in terms of, for example, accountability, reporting lines, level of independence?
- To whom will you be reporting on a daily basis? If not reporting directly to senior management, will there be lines of communication to the board, the chairperson, managing director or chief executive officer of the organisation?
- What level of interaction will you have with other solicitors (either within your local or regional/global organisation or externally)? Will you be allowed to brief or seek advice from outside legal advisors (and what will your budget be) and will you be able to choose the law firms or counsel? See Chapter 3 for further information on this topic.
- Will the job entail travel for business or to conferences?
- Will you be responsible for managing legal and non-legal staff? If so, who will be reporting to you as a line manager or, if in a matrixed management structure, who will have a 'dotted line' to you?
- If there is a compliance function in the organisation, is there a clear understanding of the respective roles of the legal and compliance function?
- Is it anticipated that you would be taking on additional regulatory obligations (for instance, data protection officer, money-laundering reporting officer, company secretary, pension trustee, director)?
- Will you receive any training when you start and during your employment? Will developmental programmes typically available to managerial staff (such as leadership training etc) be available to you if you so choose? Will specialised legal training be available?

### 4. TERMS AND CONDITIONS OF EMPLOYMENT

- What will your remuneration package be – level of salary, bonuses, other benefits? The question of pay in the public sector should also be considered in respect of the relevant financial emergency measures legislation and national agreements.
- How often will you get pay reviews, and will these reviews be linked to your personal or your organisation's performance, or to a specific category or level of employee within the organisation?
- Will the employer fund health insurance, disability insurance, pensions and any other relevant expenses? Can you obtain a copy of the explanatory booklets for the relevant schemes?
- Will you be entitled to participate in profit sharing/bonus schemes or share plans? If so, how will the entitlements be calculated?
- Will you get a company car with mileage and travelling allowance or expenses, and are there parking facilities?
- What are the probationary and notice periods for your employment?

- Will you maintain your practising certificate in your new role? (You have an obligation to do so if you will be providing legal services to your organisation, as explained in the *Regulatory Guide for In-house Solicitors Employed in the Corporate and Public Sectors*.) If so, will your employer pay for your practising certificate? The In-house and Public Sector Committee has compiled some brief and persuasive information that you might like to use to explain to your employer why you should hold a practising certificate, available on the committee's section of the Society's website ([www.lawsociety.ie](http://www.lawsociety.ie)) under the FAQ section headed 'Why purchase a practising certificate if you are an in-house solicitor?'
- Will the employer give you an indemnity and waiver of liability in respect of professional negligence, if you do not have insurance? The *Regulatory Guide for In-house Solicitors Employed in the Corporate and Public Sectors* includes a chapter on professional indemnity insurance. If the organisation that you are joining maintains a directors and officers insurance policy, will you be covered by that policy?
- Will you have your own office or sit in an open-plan office? If you are sitting in open plan, will you have access to a conference room or office to deal with confidential matters? What is the 'working from home' policy?
- What role will technology play in your day-to-day work? Will you have sufficient support and tools in areas such as computers, communications, records and information management, case management, administrative processes (such as time recording, budgeting, external counsel invoicing)?
- Will you have administrative or secretarial support, or will you be expected to manage your own calendar, do all your own typing and filing, and answer phones? You should note that the level of administrative support in an in-house legal role tends to be less than is traditionally available in private practice.
- Will you have a legal assistant, paralegal or any form of backup?
- Will you have a budget for legal research resources, online update and search services, purchasing legal books, texts and other materials?
- Will your employer pay for you to attend conferences or seminars and otherwise afford you the opportunity and time to participate in professional associations and compulsory CPD training?
- What are the career/promotion opportunities offered by your employer? Are these confined to the legal function or will they encompass other areas within the organisation?
- What are the business/professional development and succession planning opportunities and support offered by your employer? Are these confined to the legal function or will they encompass other areas within the organisation?
- Will you be expected to deal with your employer's clients directly and, if so, in what capacity (for example, legal, sales, marketing)? See the section in Chapter 1 headed 'The in-house solicitor as consultant to the organisation's customers/clients'.
- If the organisation is a semi-state body, there may be independence requirements imposed by statute, and this will have an impact on the expected interaction with government functions and other State bodies and will curtail the interaction, if any, with the Office of the Attorney General. For example, any contemplated movement within and between State bodies or related organisations such as the EU Commission, either permanently or on a secondment basis, should be raised.

These checklists should help you to evaluate the position and whether you are interested in pursuing it. They are not exhaustive and other queries may also be appropriate.

## APPLYING FOR A POSITION IN THE PUBLIC SECTOR

Public sector recruitment of solicitors – including for the civil service, the health sector, An Garda Síochána and other emergency services, the local authorities, European and international organisations and the education sector – is provided by the Public Appointments Service (PAS). Vacancies, both temporary and permanent, are advertised in the national daily papers and also on [www.publicjobs.ie](http://www.publicjobs.ie). Applications can be submitted via the website. The PAS is located at Chapter House, 26/30 Upper Abbey Street, Dublin 1. The service also allows any person interested in a legal position to register for notification of any future vacancies. The PAS also operates a dedicated website, which can be accessed at [www.stateboards.ie](http://www.stateboards.ie), which gives information on membership of State boards and details of current vacancies on State boards.

For public-sector roles, recruitment is by competitive interview. Generally speaking, the interview will be concerned with such matters as the qualifications, training, experience, capacity, competencies, and general suitability of the candidate. At the same time, this allows the applicant to make an assessment of the job and the organisation. Some of the points in the checklists set out above that relate to the private sector may also be helpful in evaluating any public-sector position.

Office structures within the public sector are usually already well established. Reporting lines, together with other office procedures, will be advised to the successful candidate on request, prior to taking up the position.

In the private sector, the level of formality of the recruitment process may vary depending on the hiring organisation. Larger organisations increasingly run sophisticated processes comprising multiple interviews, formal assessments, and even background checks. You should carefully research the process before embarking on it, so as to be sure to maximise your chances of success.

## GETTING STARTED – DEFINING YOUR ROLE

Solicitors who work in-house owe the same duties to their client(s) as solicitors in private practice – see the Law Society’s *Guide to Good Professional Conduct for Solicitors* (third edition). These duties include:

- To follow (observe) the rules of professional conduct,
- As an officer of the court, to carry out the duties involved, including:
  - To be cognisant of your overriding duty to the court to ensure, in the public interest, that the proper and efficient administration of justice is achieved,
  - To assist the court in the administration of justice,
  - Not to deceive or knowingly or recklessly mislead the court,
- To carry out work with due care, skill and diligence.

The in-house solicitor may be more likely to give business advice than a solicitor in private practice. The in-house solicitor’s dual role as legal and business advisor may bring up issues of whether certain communications may be either wholly or partly covered by legal professional privilege. See further detail on legal professional privilege in Chapter 4.

## WHAT IS YOUR ROLE?

The following questions should emphasise the importance of defining your role as in-house solicitor beyond your pure technical legal role:

- Do you have the authority and resources to carry out your role, whether alone or as part of a legal function?
- What are your organisation's priority (high) risks and what are the lower risks?
- Are time and money being allocated to them accordingly?
- Do you have enough authority to convey your opinions and instructions and get top-level support to address them?
- Is your time being spent each day reacting to urgent problems and issues that arise to the detriment of potentially more important and strategic work?
- Is there a tension or conflict between your role of protecting the organisation from compliance or criminal risk, and your role of supporting the business or other aims of your organisation? If so, is it possible to reconcile these two elements?
- Are you and the legal function expected to act as 'guardian' of your employer's integrity and honesty? Are you expected to act as the sole guardian? If so, and in particular if you are a sole in-house solicitor, is it appropriate that this duty of integrity and honesty is solely your responsibility or can you obtain the support of the organisation?

In-house solicitors must act in the best interests of their client – that is, their employer. While doing this, it is important that there is no confusion about that role. If it has not already been done, the in-house solicitor needs to define the role (including the questions listed above) and address any grey areas where there is no clear responsibility or clarity. This might appear unimportant to others within the organisation but, without such clarity, there are likely to be increased difficulties, and the organisation's exposure to risk is increased. Clarifying this may also be an opportunity for the organisation to focus more broadly on risk management and compliance. It needs to be clear to all that the client is the organisation, rather than the individual directors, officers or employees (or even third parties), even though the in-house solicitor may have many internal emanations of that client drawn from the various functions operating within that organisation. If there is ever any doubt about this, it should be highlighted immediately that you are not advising anyone in their personal capacity, to avoid any misunderstanding. It is not unusual for colleagues of solicitors in in-house roles to ask for personal legal advice, often in a very informal manner. However, the provision of such advice is inappropriate (and is likely not covered by legal privilege, by your practising certificate, or by any insurance or indemnities you may have), given that your client is your employer and nobody else. See the [Regulatory Guide for In-house Solicitors Employed in the Corporate and Public Sectors](#).

## ADDITIONAL CONSIDERATIONS WHEN THE ROLE IS NEW AND NOT CLEARLY DEFINED

Those applying for a newly created position should be aware that the role may not be clearly defined. In such circumstances, it may be necessary to clarify and define the role, functions, and responsibilities, including reporting lines, management position within the organisation, and resources available to you. These issues may have a bearing on whether you accept the position in the first instance. However, you should also appreciate that the role of the in-house solicitor will inevitably evolve and change in step with the changing needs of the organisation. You should be comfortable dealing with a certain level of ambiguity in this regard and be prepared to be flexible to ensure you continue to be relevant and of value to your organisation as it evolves.

## WHO SHOULD MANAGE THE IN-HOUSE LEGAL FUNCTION?

It is highly desirable that the work of an in-house legal function is controlled by the most senior solicitor working in that function. In practice, the staffing, objectives, plans, strategies and budgets of the in-house legal function must be consistent with those of the employer.

The head of the legal function will be best placed to formulate his/her legal function's role within such an operational framework. Similarly, he/she will be best placed to assess and decide on important issues such as recruitment, budgeting, the performance of his/her staff, and the establishment of an appropriate management structure within whatever framework the employer has in place. In addition, it is increasingly common for the head of the legal function to sit on, or report directly to, the senior management team.

## WHAT ARE THE INTERNAL REPORTING LINES?

As well as understanding your role, it is important to understand the extent of your authority by establishing:

- To whom does the in-house solicitor/legal function report?
- Will there be a separate legal function, and who retains control over it?
- To whom should the in-house solicitor report concerns?

The reporting line may affect the in-house solicitor's authority and influence. Some in-house solicitors report to the board or to a specific director. Others typically report to the CEO, chairperson, or to a specific manager of the company, while others may report to a regional or global legal director. Even though, on an average day, the in-house solicitor may report to or work with various office-holders, directors, and managers about different projects, it is important to have a formal structure in place so that there is clarity about who is the in-house solicitor's formal line manager.

If the senior in-house solicitor retains control over the legal function, this may assist in control and allocation of legal resources and the development of overall legal plans and strategies for the organisation, although this also can be achieved working in a matrixed management system with embedded legal advisors who are not working separately from the organisation. The larger the number of legal advisors, the less likely it is that the general counsel or senior in-house solicitor will be familiar with every matter. However, it would be advisable to have a formal line of reporting to the general counsel or senior solicitor to ensure he/she is aware of potentially strategic and significant matters. In addition to having this structured flow of information, lines of authority should be very clear.

In-house solicitors should be advised to report any concerns to the general counsel or senior in-house solicitor. If the concern is about the general counsel or senior in-house solicitor, and the matter cannot be resolved, then the in-house solicitor should review and consider whether the general counsel's or senior in-house solicitor's manager may be the appropriate person with whom to discuss it.

In this particular context, it is of the utmost importance to reiterate that in-house solicitors must establish and understand who (and what) the client/employer is, how the employer's organisation operates, and the legislative and regulatory environment that applies to it. This information will be invaluable when providing legal advice to the employer. Conflicts may inevitably arise between the aspirations/instructions of another employee and the in-house solicitor's duty to the employer. For

that, and other reasons already outlined, knowledge of the reporting protocols that the in-house solicitor is required to observe are critical. If, on the one hand, reporting arrangements are too limited, it makes the exercise of the in-house solicitor's function very difficult. On the other hand, if the reporting arrangements are unclear, it may be difficult and/or time-consuming (particularly in critical or urgent situations) to establish the person(s) to whom legal advice should be tendered.

In the context of a private-sector corporation, for example, all activities of that corporation and of its in-house employees are activities emanating and/or are delegated from a board of directors or other statutory, legal or nominated source of authority. When difficulties arise, it is important that the senior or sole in-house solicitor has effective lines of communication, if not direct access, to the most senior available person (potentially, this should be the chief executive, a non-executive member of the board, or the chairperson, as the case may be). This will enable consolidated advice to be sent to the true decision-maker in a difficult situation that needs such formality. It is recommended that this is an issue that ought to be covered in the terms of employment of the in-house solicitor and should be considered for inclusion in the mission statement of the legal function (subject to the approval of the employer's board).

#### SHOULD THE IN-HOUSE SOLICITOR BE A BOARD DIRECTOR OR HAVE BOARD ACCESS?

Whether the in-house solicitor will become a board member depends on the organisation and the role. Membership would provide a higher profile for the areas for which the in-house solicitor is responsible and more opportunity for the in-house solicitor to put forward opinions and listen to counter and business arguments. Some would argue that there may be a risk of conflict of interest with ethical and professional obligations if the solicitor is on the board – if there is a possibility of conflict, the in-house solicitor will need to be aware of and address this issue. The In-house and Public Sector Committee has written a *Gazette* article on this topic: '[Should you serve on the board if asked?](#)' (March 2017, p13).

Some commentators advise that, if there is no board membership, then board access is important where needed to carry out the in-house solicitor's role to act in the best interests of the organisation.

Similar issues should be considered if the in-house solicitor is requested to become a trustee of the employer's pension scheme. The In-house and Public Sector Committee has written a *Gazette* article (Aug/Sept 2017, p28) on this topic: '[An invitation to serve](#)'.

#### SHOULD THE IN-HOUSE SOLICITOR BE A COMPANY SECRETARY?

The in-house solicitor may act as company secretary to one or more of his/her employer's corporate entities. In this role, his/her duties may be wide-ranging and include obligations under company law and general responsibilities to act with due care, skill and diligence. It may also cover procedural responsibilities such as the preparation and filing of Companies Registration Office forms, management of board and shareholder meetings, and preparation of draft minutes within a target timeframe.<sup>1</sup> In larger organisations, this role may be performed by a qualified solicitor in the team or a specialist company secretary, depending on the (legal) budget available, but there are several organisations that have combined the roles of general counsel or head of legal with that of company secretary. If you are asked to act as company secretary, it will be important to clarify and address any conflicts that may arise as a result of being both the company secretary and the legal advisor. If another person acts as company

<sup>1</sup> See [www.odce.ie/en-gb/companylawyou/companiesdirectorssecretaries/responsibilities.aspx](http://www.odce.ie/en-gb/companylawyou/companiesdirectorssecretaries/responsibilities.aspx).

secretary, there could be an overlap of roles or misunderstandings about who should be performing certain tasks. Once again, the key is to clarify and agree the respective roles.

### CORPORATE GOVERNANCE

A formal and coherent governance structure is important for every organisation, so that it can carry out its activities in a legal, compliant, and ethical manner and to help ensure important decisions are made and implemented efficiently. Regardless of whether the in-house solicitor acts as director or company secretary for his employer, he may still have a central role to play in the governance of the organisation. This can include arranging leadership or management meetings, minuting/recording or tracking their proceedings and actions, or establishing and implementing governance forums and procedures.

In the public and semi-state sectors, it should be established if your organisation is subject to the [Code of Practice for the Governance of State Bodies](#) and, if so, the in-house solicitor should ensure that the organisation is aware of and implements all requirements of the code.

### WHISTLEBLOWING AND OTHER RELEVANT LEGISLATION

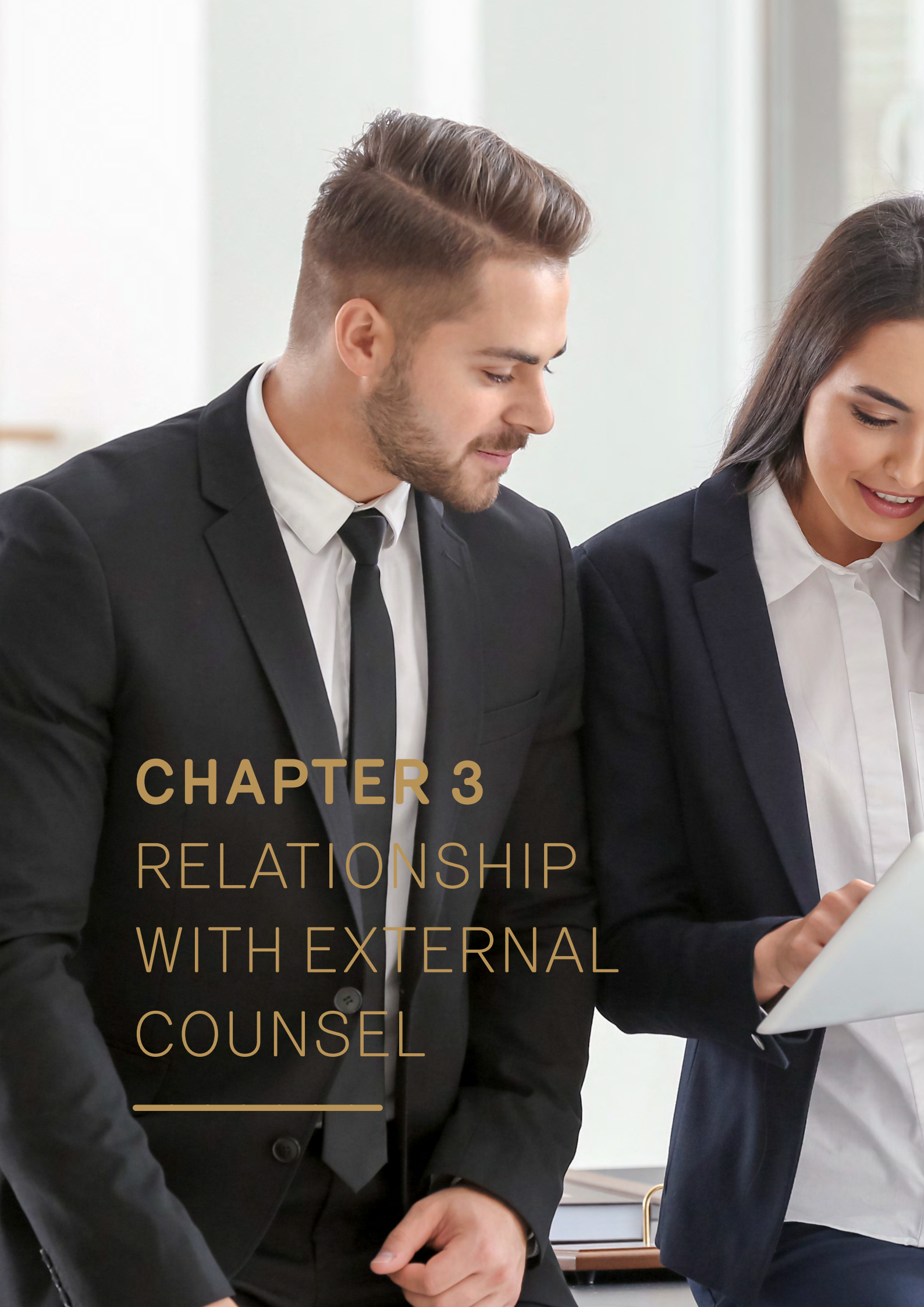
Many semi-state bodies in Ireland are subject to specific legislation governing the body in question. The Electricity Supply Board (ESB), for example, is subject to the *Electricity Acts*. If working in the semi-state sector, it will be important for you to establish whether your organisation is governed by any such legislation and, if so, to familiarise yourself and help ensure compliance with the provisions of that legislation.

In-house solicitors in both the public and the private sectors should also familiarise themselves with the [Protected Disclosures Act 2014](#), which provides a statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the workplace, and with other relevant legislation, such as lobbying, data protection, anti-money-laundering, financial services, and public authority legislation, together with any other laws that are relevant to the organisation in question. Some organisations might have services facilitating internal and external pathways for raising issues in a whistleblowing context, and in-house solicitors should be familiar with any such outlets.

### TRAINING AND DEVELOPMENT

Keeping up-to-date on relevant legal developments can be a challenge for in-house solicitors, but it is an important requirement, both in terms of their professional obligations and duties to the organisation and in terms of being aware of relevant legal developments of which they and other employees need to be kept apprised. In-house solicitors are in a good position to evaluate any training needed to ensure that they and relevant employees in the organisation are kept up-to-date on relevant legal requirements and responsibilities. Increasingly, the in-house solicitor also needs to have knowledge of non-legal areas – finance, management, technology, etc – so appropriate training should also be obtained in these areas.

Time, cost, and resources will generally be issues that need to be taken into consideration in rolling-out or attending training sessions, and it is recommended that in-house solicitors prioritise training requirements and discuss them with directors and senior management, human resources, and/or the compliance officer, as appropriate.

A man and a woman in business attire are looking at a tablet together. The man is on the left, wearing a dark suit, white shirt, and dark tie. The woman is on the right, wearing a dark blazer and white shirt. They are both smiling and looking at the tablet. The background is a bright, modern office setting.

**CHAPTER 3**  
RELATIONSHIP  
WITH EXTERNAL  
COUNSEL

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Organisations – both large and small and whether in the public sector or private sector – may frequently seek external legal advice and use external legal advisors, even though they employ their own in-house solicitors. Managing that ‘outsourcing’ of the provision of legal services for the organisation is a key role of, and can pose challenges for, the in-house solicitor.

## WHY USE AN EXTERNAL LEGAL ADVISOR?

There are several reasons why organisations seek to obtain external legal advice, including, but not limited to:

- *Expertise* – to obtain expert or specialist legal advice in a particular area (not within the core practice of the in-house legal function) or because of the infrequency, size, nature and/or complexity of the matter involved (for example, corporate finance, environmental, competition, technology matters, etc),
- *Capacity* – the capacity of the in-house legal function to take on extra work,
- *Jurisdiction* – the need to obtain local expert advice if the matter relates to the law of another jurisdiction,
- ‘*Second opinion*’ – a desire to receive a second opinion on a point (‘advice’ is just an opinion; there is no bar to an organisation receiving a second opinion on the same point, although difficulties can arise if the two opinions differ), and
- *Sensitive matters* – for example, where a conflict of interest might, or might be seen to, create difficulties for the in-house solicitor in advising objectively, or where a matter relates to parties related to the organisation (such as shareholders or non-executive directors or pension trustees) whose interests may not be the same as those of the organisation.

## THE ROLE OF THE IN-HOUSE SOLICITOR IN ENGAGING WITH EXTERNAL COUNSEL

The in-house solicitor is best placed in an organisation to implement and manage the outsourcing of legal services, essentially because of their own legal expertise and their ability to ‘speak the language’ of both the organisation and the legal services provider. Their knowledge of:

- The organisation’s corporate structure, ethos, and business,
- Its place in the market and business strategy/objectives or its corporate purpose,
- How legal services are provided in the marketplace, and
- The legal risk management strategy that will have been developed by the in-house solicitor (or their legal function) following an analysis of the legal risks of the organisation by the in-house solicitor,

means that outsourcing is more likely to succeed if the in-house solicitor designs and manages the outsourcing process and structure.

The management of external legal resources is usually done by the in-house solicitor or legal function for the reasons set out above. Instructions to an external legal advisor should always come, in the first instance, from the in-house solicitor or, at least, from members of the business having received guidance from the legal team. While the instructions on a project or transaction may come from the appropriate business personnel within the organisation, these should be monitored by the in-house solicitor, who should be kept briefed by his/her internal business colleagues and by the external legal advisor. It should be made clear to external counsel that, regardless of the level of involvement of an in-house solicitor in seeking advice, the responsibility of the external advisor is to provide advice within the scope of the retainer contract (see below).

In most cases, the in-house solicitor will remain the principal contact for the external legal advisors, and the external legal advisors should report into the in-house solicitor/legal function. The in-house solicitor should be kept informed at all times by the external legal advisor of all legal advice and services being delivered to the organisation in respect of instructions received.

There are several reasons for this:

- The in-house solicitor is best positioned to formulate and issue the organisation's instructions to the external legal advisor (in line with the legal risk management and legal risk strategy for that organisation) – net issues can be identified by the in-house solicitor at an early stage and presented as such in the instructions,
- Ultimately, the in-house solicitor must be satisfied that the legal advice received from the external legal advisors is relevant and 'actionable' from the organisation's perspective, so the monitoring of the 'client' instructions by the in-house solicitor is fundamental to obtaining the most appropriate, relevant, and cost-effective delivery of external legal advice and services to the organisation,
- It helps to ensure consistency of legal advice throughout the organisation and helps to ensure that, for example, there is no duplication or inconsistency of legal advice being delivered to the organisation (thereby creating confusion and wasting resources),
- It ensures the legal budget and legal costs/fees of external legal advisors are managed by the person who best understands them (the in-house solicitor); it also reduces the risk of incurring legal fees needlessly as a result of either unclear instructions or time spent on non-core or irrelevant issues,
- If the scope of the engagement needs to change, this can be appropriately considered and documented,
- Communicating through the in-house solicitor should increase the prospects of successfully asserting legal professional privilege, and
- The in-house solicitor may have a management or reporting role within the organisation in terms of reporting to senior management or the board on the legal function (both internal and external), the management of legal resources, and the legal budget and/or the legal risk strategy for the organisation or for any particular project.

There are some organisations (for example, some banks on particular matters) where it may not be necessary or practical to have the in-house solicitor involved to the extent recommended above. In addition, there will be situations where the in-house solicitor is not involved in external legal work. In those situations, what is important is that the role – if any – of the in-house solicitor in the matter, and the limits on that involvement, are clear.

## GOVERNANCE AND THE USE OF EXTERNAL COUNSEL

It is recommended that the employer should have a documented policy in place, in consultation with the senior in-house solicitor, with reference to 'who, when and how' legal work is outsourced. External counsel to whom work is outsourced should be required, as part of their retainer, to report all concerns/issues regarding corporate governance issues (regarding the functions, powers, and duties of the organisation and their proper implementation and application in accordance with the law) to the senior in-house solicitor.

## HOW TO CHOOSE EXTERNAL LEGAL ADVISORS

The task of selecting the most appropriate external legal advisor for an organisation, and when to seek external legal services, should ideally be made by the in-house solicitor for the reasons above, albeit in the context of their organisation's finance, procurement and corporate governance regime. The responsibility for the operational management of this function should ideally rest with the in-house solicitor as a subject-matter expert. There are various ways of selecting external legal advisors, which

vary depending on the size of the organisation, its needs to outsource (whether for legal expertise, a specific transaction, or capacity/overflow or otherwise), its legal budget, and whether the organisation is within the public sector or the private sector.

### SETTING UP AND USING EXTERNAL COUNSEL PANELS

Many larger organisations establish panels of external law firms, which are then available to take instructions when the need arises. The process of creating a panel can be time-consuming and administratively burdensome, but it does create opportunities to test the market and generate price competition (depending on the value available). However, if specialist legal advice in a specific area is required, a panel may not be appropriate, and it may be that – particularly in the public sector – some form of tender or mini-tender competition is held to select such a specialist. Organisations may have a formal or informal selection process depending on several factors – for example, whether they are subject to procurement laws and guidelines, their internal procurement and corporate governance procedures, and whether they are in the public or private sector.

In setting up a panel of external legal advisors, selection criteria will need to be set governing selection to the panel (taking into account any applicable procurement laws and guidelines, which are particularly important in the public and utilities sectors, and/or procurement policies of the organisation). If a panel is established from those deemed capable of meeting the selection criteria, this could be for a limited period (for example, a fixed number of months or years). This enables the organisation to plan its legal resources in conjunction with the in-house solicitor for the short-term and medium-term. An opportunity then arises on the expiry of that period to review the needs of the organisation for such a panel and for any new tendering process.

In terms of resources, depending on the need of the organisation for legal services or in relation to any particular area of legal services, there is merit in limiting the number of law firms on the panel. External legal advisors appointed to a panel of limited size should develop a good understanding of the ethos and culture of the organisation, an understanding of the complementary roles of the in-house solicitor and their role as external legal advisor, offer good service and value for money (depending on how the fees/cost structure is set up under the panel), and be committed to the organisation as an important client. In return, they are entitled to expect a reasonable volume of work and fees, as well as engagement with the in-house solicitor and his organisation through the arrangement.

### SELECTION CRITERIA FOR EXTERNAL COUNSEL

Selection criteria for choosing external legal advisors will depend on the objective – for example, is the exercise for the purpose of obtaining a specialist legal expert in a particular area of expertise, establishing a panel, selecting local legal advisors based in other jurisdictions for obtaining local legal expertise, or for litigation/court proceedings? Traditionally, selection criteria would cover such areas as relevant expertise in a specialist area or areas of law, experience, and cost-effectiveness, as well as the existence of any conflicts of interest with other clients of the external legal advisors. Such criteria could also include promptness in delivery of the legal services (this could be a critical factor, for example, in certain matters such as litigation or corporate transactions), availability and skill-set of key personnel or ‘lead partner(s)’, resources available to deliver the service, and back-up legal staff. Additional considerations could be the ‘value add’ an external firm brings, such as training, provision

of updates, secondments, diversity, and corporate citizenship activities etc. It is important that there be no perceived conflict of interest in your selection of external counsel.

Another key factor to be considered when selecting external legal advisors is the proposed fee structure/costs of external legal advisors and how this fits in with the overall approach to legal costs/fees in the organisation and/or the nature of the particular matters for which external legal services are being sought. The in-house solicitor will have a key contribution to make to the organisation as to how fees should be structured. There should be some flexibility – for example, a fixed or flat fee may be appropriate for some types of outsourced legal work, whereas discounted hourly rates or a capped fee may be appropriate for other types of legal work. There are varying degrees of control that can be exercised by the organisation in monitoring the legal budget, depending on the fee structure agreed, and this is dealt with further below.

If a panel of law firms is not considered necessary or practical, conducting a mini-tender for specific projects can allow organisations to choose from a number of law firms with expertise in that particular area and may lead to higher quality advice and reduced fees for the organisation.

Finally, allocation of legal work from an organisation to any particular external legal advisor on a panel is best reserved to the legal function/in-house solicitor in the organisation, as the person(s) best placed to decide on such an allocation, for the reasons referred to above.

#### **DOCUMENTING THE ENGAGEMENT OF EXTERNAL COUNSEL – THE RETAINER CONTRACT**

Any situation in an organisation calling for legal advice involves risk, and the legal advice process can itself have an impact on the risk in a situation. Any outsourcing of legal advice means involving a service provider outside the organisation with different perspectives and interests in often highly sensitive and confidential risk-related matters.

The scope of the advice required should therefore be carefully considered in advance and clearly set out in a retainer contract at the earliest possible time. This is a formal contract or some form of legal services agreement or letter of appointment that sets out the terms governing how the external legal advisor will provide legal services to the organisation. It should deal with such matters as instructions, key personnel, resources, conflicts of interest, professional indemnity insurance, liabilities, reporting, fee structure, intellectual property rights, confidentiality and information security, termination, ongoing reviews, and the organisation's right of review of the performance of external legal services by the in-house solicitor etc – some of these aspects are considered further below.

Consideration should be given to the best form of retainer contract: the firm's letter of engagement and standard terms, or a contract form prepared by the in-house solicitor. If using the firm's draft, this should be treated like any other contract with an external party. You should have regard to the fact that there are terms or duties arising by law – for example, the solicitor's lien for unpaid fees.

#### **MANAGING CONFLICTS OF INTEREST**

When outsourcing legal work to external law firms, there may be a danger that particular law firms will have – either at that time or at some future time – a conflict of interest. Conflict of interest problems arise most often due to a client's desire to instruct a solicitor on a matter that has some connec-

tion with another (past or present) matter or client with which that solicitor was separately involved.

The solicitor's desire to act for both interests often creates concerns for one or more clients as a result of the confidential nature of the relationship or of services that have been or are being provided, and a concern that the solicitor will not have the necessary independence or impartiality. If the interests of two clients conflict, can each client be satisfied that the confidentiality of its information (including legally privileged information) is protected?

The regulatory position regarding conflicts of interest for solicitors is set out in the Law Society's [Guide to Good Professional Conduct for Solicitors](#) (third edition). As an in-house solicitor, you should be familiar with these rules. The legal rules that apply to conflicts of interest for solicitors are clear, but solicitors' firms will often only contract with clients on terms that modify those legal rules to give the firm the flexibility to deal with conflict problems as they arise. These modifications often seek to give the solicitor contractual flexibility and discretion (consistent with applicable regulations) to resolve conflicts in a way of their choosing. If not managed carefully, solicitors' potential conflicts of interest can create difficulties, reputational damage, and embarrassment for the in-house solicitor, as well as for the external solicitor and client.

A practical approach can sometimes help provide acceptable solutions. A conflict check must always be carried out by the solicitors' firm prior to any specific instructions being taken on any particular project. The in-house solicitor is likely to have a greater understanding of the instructions they want to give the firm, but is unlikely to know the firm's other client relationships (and the firm should not disclose these to the in-house solicitor). So, the conflict process should aim to give the firm as much information as possible about the project and for the firm to search possible conflicts as carefully as possible. This can sometimes be an iterative process, involving increasingly specific disclosure as the in-house solicitor becomes more comfortable with the firm's position.

However, even a very detailed conflict search may not reveal all latent conflict problems, and no conflict process can reveal problems that cannot be foreseen. It is better to document, as specifically as possible in the retainer contract, a suitable process for dealing with and resolving any future conflict.

Where applicable, regard should be had by both the in-house solicitor and the external solicitor to any possible competition law (for example, market abuse) implications of a conflict check.

While it is primarily the external law firm's responsibility to ensure that no conflict of interest exists when representing an organisation, the organisation's in-house solicitor should be mindful of the rules governing conflicts of interest and should take steps to ensure that firms undertake checks to ensure that no such conflicts exist. In addition to the ones mentioned above, prudent steps include requesting external law firms to outline any actual or potential conflicts of interest before they are instructed to act for an organisation and ensuring that any actual or potential conflicts of interest that arise during such representation are immediately brought to the attention of the in-house solicitor for resolution.

## FEES AND BILLING

The law requires that clients are made aware of the legal costs for the provision of any legal services by their solicitors and barristers. The information must be given in writing, commonly referred to as a section 150 Notice (Legal Services Regulation Act 2015) and be provided after receiving instructions and before providing any legal services. As an alternative to a section 150 notice there is a section 151 agreement which is an agreement on costs, however the provisions of a section S.150 notice must be contained in the agreement and no other amount can be chargeable than what is specified. For more details and precedents on the section 150 and section 151 agreements see the following link <https://www.lawsociety.ie/globalassets/documents/members/s.150-legalcosts-guide-precedents.docx>

There are various fee structures that can be used, such as fees based on hourly rates, a flat or fixed fee, capped fees, retainer fees, blended rates, or discounted fees. It may be appropriate to put different fee structures in place for different types of legal work. External law firms should be expected to display flexibility with respect to rates, including but not limited to discounted rates assuming certain volumes of work, reduced fees for unsuccessful matters or transactions, fixed fees for certain types of work, and special rates for solicitors to go on retainer or secondment to the organisation. Naturally, however, the legal advisor's willingness to depart from hourly rates will usually depend on the organisation's ability to negotiate such arrangements with them. An in-house solicitor's familiarity with the going rates and fee structures for the services of external law firms is therefore important in ensuring that the organisation gets value for money, while also giving the external legal firm a reasonable return.

In addition, it is recommended that appropriate quotes on fees be obtained for all legal work outsourced, which should be based on the fee structures agreed in any contract or letter of appointment. Such fees should cover the work up to completion and post-completion matters. When detailing the costs involved a breakdown should be given in terms of partner/resources/hours anticipated, and the in-house solicitor should be able to comment on these and agree them as appropriate. Detailing these costs are internally important for an organisation in relation to any budget being set aside for legal services on any specific matter or transaction.

Ongoing fees charged for a matter should be monitored by the firm and the in-house solicitor against any quote originally given. External legal advisors should be instructed to inform the organisation or in-house solicitor on a regular basis regarding the level of fees being incurred, but which have not yet been billed (and, in particular, where any estimate or cap is being approached).

Agreement should also be reached on when invoices should be raised – monthly, quarterly, at the end of the transaction or particular milestones, on reaching any agreed fee cap, etc. To ensure that there are no surprises when bills are issued by an external law firm, in-house solicitors should ensure that they review the bill prior to it being paid to ensure the services described and hours worked are accurate. A prudent step in this regard would be to instruct the external law firm to issue bills initially in draft format, and against details of costs already furnished, thereby ensuring that any issues are picked up and resolved before the final bill is issued. Final bills can only be issued once the in-house solicitor is satisfied with the content of the draft bill.

Although bill formats vary by law firm they must comply with section 152 Legal Services Regulation Act 2015, in-house solicitors may request the law firm to issue detailed bills, including descriptions of work performed by each fee-earner broken down by minutes and the total hours and minutes billed by each fee-earner. In practice, it can sometimes be quite difficult for the in-house solicitor to discern, based on such information, which work has value and which has not. This is especially the case where the matter is large or prolonged or involves many solicitors or if the firm charges for its time on the basis of 'minimum units' (where the time itself is not charged, but an estimated 'minimum unit of time' is charged). Unless the information relates to a very recent period and the reviewing in-house solicitor has been very directly and closely involved in the matter, it is difficult to evaluate many legal service providers' invoices. Perhaps in response to this, it is now possible to subscribe to services that review legal bills and claim to identify areas where the bill does not conform to the engagement terms, thus enabling errors to be identified and corrected. For more details and a precedent on a section 152 Bill of Costs see the following link <https://www.lawsociety.ie/globalassets/documents/members/s.150-legalcosts-guide-precedents.docx>

One of the duties of the in-house solicitor will be to help coordinate the process for payment of external law firm fees. This will require involvement in the review and billing process described above, as well as ensuring the smooth operation of any fee payment systems that the organisation or external counsel have established.

#### **ENSURING A SATISFACTORY SERVICE/QUALITY CONTROL**

Ongoing monitoring of the external law firm by the in-house solicitor should also be undertaken to ensure that the organisation is getting a satisfactory service. There are two aspects to this:

- 'Transaction management', or the monitoring of the performance of the services, including the professional resources used, and
- 'Relationship management', or the monitoring of the relationship between the organisation and the external legal advisor.

Any agreement or letter of appointment will usually reserve the right to the organisation to have its in-house solicitor carry out reviews of the performance of the legal services by the external legal advisors. The organisation will typically be looking for expertise and good response times and, where larger firms are instructed, prompt access to a senior, lead, or client-relationship partner of the external law firm when necessary. As the in-house solicitor will be expected to provide relevant advice and input to his/her organisation, it will be of particular importance that the legal advice given is specific, practical, and readily applicable to the particular situation, rather than theoretical or equivocal.



If a legal panel is in place, an annual review of each of the external law firm's performance should be conducted to identify any issues. Similarly, a review of an external law firm's performance should ideally be conducted after each major transaction or matter. Such review should take into account the fees being charged by the law firm in question to ensure that the in-house solicitor's organisation is getting value for money as well as a satisfactory service. This will also give the external law firm an opportunity to give feedback on the client (which the in-house solicitor should listen to and act on where appropriate).

Solicitors acting in private practice and in-house, despite their often varying work structures, still share the same professional conduct obligations, including maintenance of professional independence and confidentiality and avoidance of conflicts of interest. While an in-house solicitor may only have one client, there is no difference in, or dilution of, these obligations. All solicitors admitted to the Roll must observe the highest professional standards and adhere strictly to their duties as officers of the court and as required by the [Solicitors Acts 1954-2015](#).





**CHAPTER 4**  
PROFESSIONAL  
PRACTICE ISSUES

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Misconduct applies equally to solicitors working in-house as it does to private practitioners. Misconduct by legal practitioners (solicitors and barristers) is defined in [section 50](#) of the *Legal Services Regulation Act 2015*. It includes the following:

- In the case of a solicitor, consists of a breach of the *Solicitors Acts 1954-2015* or any regulation made under those acts,
- In the case of a solicitor, is likely to bring the solicitors' profession into disrepute.

An organisation that employs a solicitor will do so because of the specialist knowledge, experience, objectivity, judgement and professionalism that he/she will bring to that organisation. The in-house solicitor will be required to apply these characteristics in many diverse situations, in the best interests of their employer, with due care and skill, while carrying out their instructions with due diligence. In general, in the modern business world, clients have an increasing expectation with regard to the skills, expertise and training of solicitors, whether in-house or in private practice. When an in-house solicitor observes the highest professional standards, it is to the ultimate benefit of the employer. The in-house solicitor must ensure that compliance with these professional standards is a priority in their day-to-day work.

### PROFESSIONAL INDEPENDENCE

It is particularly important when practising in-house to learn and understand, as soon as possible, the nature of the business and/or service provided by an employer and the particular regulatory, business and economic, social and political contexts and environment in which such business and/or service is provided. As an employee, the in-house solicitor owes a duty of loyalty to the employer and (particularly in the public sector) may also have a statutory or contractual duty of confidentiality in addition to the general duty of confidentiality to his employer. The in-house solicitor will (not unreasonably) be expected to share the objectives of their employer, while at the same time maintaining an objective and professional attitude and judgement.

As a consequence of the proximity of the relationship that exists with the employer, a solicitor working in-house may be asked for business/service advice that may be regarded as a legitimate concern of the employer. Accordingly, it is important for the in-house solicitor and their employer to agree on the authority vested in the in-house solicitor in that capacity and to ensure that, if such business advice is given, it be identified and viewed as such, with clarity on the legal issues also given at the same time.

Should a situation arise where an employer instructs an in-house solicitor to act in a way that, in the opinion of that solicitor, could amount to unprofessional conduct on their part and/or that may even be illegal, the in-house solicitor cannot carry out those instructions and must ultimately advise that those instructions cannot be acted upon. It is recommended that the in-house solicitor, in that instance, should analyse the source and nature of the instructions received very carefully and objectively, undertake all necessary legal and other research, and consider all available options before advising the employer in this way. In most cases, the availability of other legal options should be explored, and the employer should be persuaded to choose those options. In particularly difficult situations, or where such advice is challenged by the employer, the matter might be resolved by seeking a second opinion from another solicitor or barrister. If this fails to resolve the matter, it may be necessary to raise the issue with an external party (perhaps even an authority) for guidance or resolution, being at all times cognisant of their duty of confidentiality.

In the most extreme circumstances, the in-house solicitor may also be required to step down from their position rather than follow the instructions. In such situations, the in-house solicitor's professional judgement, objectivity, training and independence will be tested, and knowledge of the employer's business and its legal, regulatory and business environment and obligations thereunder will be particularly important in seeking a resolution, ultimately to the benefit of the employer in the long run.

Every solicitor, whether in-house or in private practice, will be faced with difficult professional issues from time to time. This is inevitable, given the solicitor's role. Difficult situations surrounding the exercise of professional independence are, however, very much the exception rather than the rule. The in-house solicitor, particularly at a senior level, is generally valued for their judgement and objective contribution to the making of informed and legally correct decisions by their employer.

Solicitors and other professionals working in-house are often required to have a role in the governance of the legal entity that employs them, and senior in-house solicitors in particular may be well placed in their client's organisation to help with governance and regulatory issues. With the awareness of the need for the application of good governance and regulatory principles and practice, this aspect of an in-house solicitor's work (particularly in the corporate area) will continue to increase. Care needs to be taken in ensuring that adequate and proper training is sought in governance, in particular in corporate governance.

#### DEALING WITH THE PUBLIC

Many in-house solicitors come into contact with members of the public as a regular part of their role. A layperson may not appreciate that the in-house solicitor with whom that person is dealing must act in the interest of his/her employer only. Acting solely in the interests of the employer can often mean acting in a manner that fundamentally conflicts with the interest of the member of the public, for example, during a negotiation or dispute. It is best to limit such direct contact unless necessary and, if possible, direct such members of the public to obtain their own independent legal advice or to any customer care or complaints function, if one exists.

If there is any possibility that the situation is one where a perception of a conflict of interest may arise, then it is recommended as good practice that such an in-house solicitor should do the following:

- Ascertain whether the member of the public is legally represented,
- If the member of the public is legally represented, then all dealings should be directed via that person's solicitor,
- If the member of the public is not legally represented, it should be explained to that person that the in-house solicitor acts solely for and in the interests of the employer, that they are precluded from acting on the person's behalf, and that it is in their best interests to seek independent legal advice (it may be necessary to confirm that in writing). For vulnerable members of the public, it is best to be even more vigilant and ensure clarity in communications, making careful notes of any discussions.

See also chapter 1 of *The Regulatory Guide for In-house Solicitors Employed in the Corporate and Public Sectors*, which has a section on 'Providing legal services to third parties'.

#### SOLICITORS' UNDERTAKINGS

The giving and receipt of solicitors' undertakings is part-and-parcel of a client service in private practice. For a detailed statement of the Law Society's guidance with reference to undertakings, please refer to the Law Society's *Guide to Good Professional Conduct for Solicitors* (third edition, p48). See also

the practice note issued by the Society's Complaints and Client Relations Committee and the Guidance and Ethics Committee in March 2011, '[Notice to all practising solicitors – undertakings](#)'.

The professional obligations in relation to undertakings are no different for a solicitor working in-house from the position of colleagues in private practice. In-house solicitors are therefore responsible for their own undertakings and for those of the staff who report to them. It is recommended that the in-house solicitor's professional personal duty to comply with undertakings and the consequences of non-compliance should be explained, as often as necessary, to the employer.

In-house solicitors should not give a professional undertaking unless they have express authority in writing from the employer to do so. Furthermore, an in-house solicitor should not give an undertaking to do something in any area of the organisation's business/service that is outside that solicitor's control or delegation. As an employee, the functions delegated to an in-house solicitor will be limited (and should be clarified), and therefore undertakings should be correspondingly limited to those delegated functions. There may exist monetary caps or limits of insurance that will need to be carefully agreed and documented. For example, if the performance of some function is reserved to another employee or category of employees of the employer, that matter should not be the subject of an undertaking given by the in-house solicitor because it is outside such solicitor's control. If it is uncertain that a function is or will remain in the control of the in-house solicitor, sufficient and specific delegation of that function should be sought before that undertaking is given, so that the undertaking is capable of being honoured.

When an in-house solicitor is asked to give an undertaking on behalf of the employer, and it is clear that the intention is only to have an agreement or understanding with a third party, it should be clear on the face of that 'undertaking' that it is given only as an agent on behalf of the employer, that it is in the nature of an agreement or understanding, and that it is not a professional (that is, solicitor's) undertaking or capable of being misunderstood in that regard. It is considered that any ambiguity in the text would most likely be construed in favour of the interpretation placed upon it by the recipient of such an undertaking.

A situation could arise where the in-house solicitor is instructed to seek an undertaking from a solicitor colleague which that colleague should not give. If the other solicitor should not give such undertaking, then the in-house solicitor should not request it (see *Law Society Gazette* Jan/Feb 2016, p51, '[Do not seek undertakings that should not be given](#)').

### IN-HOUSE SOLICITORS EMPLOYED BY PUBLICLY QUOTED COMPANIES

Solicitors working in-house in the legal function of publicly quoted companies or with a publicly quoted parent should be aware that they may have a particular role in areas such as corporate governance and compliance of such public companies, and they should take specialist advice on such obligations where necessary.

Among the possible areas of involvement are:

- To provide information and analysis necessary for directors to discharge their oversight and/or public filing and disclosure responsibilities, particularly where they relate to legal compliance matters,
- Responsibility for ensuring the implementation of an effective legal compliance system with the oversight of the board of directors – increasingly, this covers whistleblowing and codes of conduct as well as legal and regulatory compliance,

- To ensure that all reporting relationships between internal and external solicitors are established at the outset, with a direct line of communication with the in-house solicitor through which external solicitors are to inform the in-house solicitor of material, potential or ongoing breaches of the law or breaches of the legal duty to the corporation.

#### OPINIONS – LEGAL AND OTHERWISE

There is no general professional duty imposed on an in-house solicitor (acting as a solicitor) to advise the employer on the commercial or operational wisdom of transactions – that is, other than on the relevant law – however, a request for legal advice from an employer may in many cases involve an assessment and judgement of the employers’ business/service, and therefore advice tendered may potentially contain elements of business as well as legal advice.

When imparting legal advice, it is important to consider the context and purpose of the request when deciding to offer written or oral advice. When written advice is sought or deemed necessary, the greatest possible care needs to be taken with the relevant research and conclusions. A document or email containing formal legal advice or written in contemplation or anticipation of legal proceedings may need to be identified as ‘legally privileged’ – see below.

#### SOLICITOR/CLIENT PRIVILEGE

Solicitor/client privilege has been the subject of some debate in the European Court of Justice in recent years. It is essential that in-house solicitors should fully apprise themselves of the position in relation to the law of privilege in the various jurisdictions where the company/organisation operates. In the European context, the European Court of Justice held in [Akzo Nobel Chemicals Ltd v European Commission](#) (C-550/07P) that legal professional privilege does not extend to communications of the in-house solicitor in relation to the enforcement of EU competition law. The Irish courts do not draw any distinction in respect of the general application of legal professional privilege to legal advice received from in-house solicitors as opposed to solicitors in private practice.

On a general note, solicitors working in-house should be aware of the risks that arise in relation to privilege, data information requests, freedom of information requests, and the discovery process in litigation or external investigations, and the importance of having an efficient document and records management system throughout the organisation. ‘eDiscovery’ is increasingly used to save costs, and external review of servers is commonplace – therefore, ensuring that your advice to the business is privileged is even more important today, as such a review can access all your written communications and emails sent over many years.

#### LITIGATION

When proceedings are issued by an in-house solicitor, it should be made clear to the party receiving the summons and to that person’s solicitor that the summons has emanated from a practising solicitor acting in a solicitor/client relationship.

If proceedings are being issued by the in-house solicitor on behalf of such an entity, the solicitor should go on record either in the solicitor’s own personal name, the name of the senior solicitor in the organisation or, if the individual practises under a business name, then under the business name. The solicitor should not go on record solely in the name of the employer.

A man with a beard and short brown hair, wearing a dark blue suit jacket, a light blue dress shirt, and a dark blue patterned tie, is smiling and looking down at a tablet computer he is holding. The background is a bright, out-of-focus window with vertical blinds.

**CHAPTER 5**  
SUPPORT AVAILABLE  
TO THE IN-HOUSE  
SOLICITOR

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In his foreword to this guide, Law Society President Michael Quinlan outlined the background and work of the Society's In-house and Public Sector Committee.

The committee currently comprises 19 in-house solicitors, drawn from a diversity of roles in the private and public sectors. It aims to represent the views and promote the interests of in-house solicitors. The committee helps to support the Law Society in the exercise of its representative, educational, and regulatory roles as they relate to the in-house sector. The 'member benefits' section below outlines those benefits of interest to in-house solicitors, for instance, *Gazette* articles and the LinkedIn in-house members-only group.

Further information regarding the committee and its work can be found on the Society's website at [www.lawsociety.ie/committees](http://www.lawsociety.ie/committees).

If there is any matter of interest or concern to you that you would like to raise with the committee, please contact the committee secretary, Louise Campbell, Law Society of Ireland, Blackhall Place, Dublin 7; tel: 01 881 5712, email: [l.campbell@lawsociety.ie](mailto:l.campbell@lawsociety.ie).

## MEMBER BENEFITS

Being a member of the Law Society entitles solicitors to benefits in addition to those attached to the practising certificate. As an in-house solicitor in the private or public sector, you may be particularly interested in the following member benefits: *Gazette* subscription, *Law Directory*, use of the Law Society Library, Career Support, the Retirement Trust Scheme, subsidised B&B at Blackhall Place, and the right to vote in Council elections and at annual general meetings.

We recognise that in-house solicitors have specific needs and so have developed resources focused on this sector. The LinkedIn Law Society in-house members-only group is a private forum for in-house solicitors to network and discuss matters of common interest. A link to the group, along with an explanation of its purpose and background, is available at [www.lawsociety.ie/inhouselinkedin](http://www.lawsociety.ie/inhouselinkedin).

The Law Society library has a list of resources, including books and journal articles of relevance to the in-house solicitor, which you will find on the In-house and Public Sector Committee section of the website at [www.lawsociety.ie/committees](http://www.lawsociety.ie/committees). You can contact the library at [libraryenquire@lawsociety.ie](mailto:libraryenquire@lawsociety.ie) or see [www.lawsociety.ie/library](http://www.lawsociety.ie/library).

The *Gazette* often publishes at least one article in each issue specific to in-house solicitors. The *eZine* also includes an 'In-house update' in every issue. Of course, the Society's website is a valuable source of information, with the In-house and Public Sector Committee section a must-read for any aspiring or current in-house solicitor.

The annual *Member Services Directory* provides information on the range of services the Law Society provides and how to access them. You receive a copy with your practising certificate or with your membership application form if you are a solicitor in the service of the State. You can learn more about the benefits of membership and download the directory at [www.lawsociety.ie/memberbenefits](http://www.lawsociety.ie/memberbenefits). If you would like to provide feedback on the services offered to members by the Law Society, please get in touch with Judith Tedders, member services executive, at [j.tedders@lawsociety.ie](mailto:j.tedders@lawsociety.ie) or tel: 01 881 5772.

## LAW SOCIETY PROFESSIONAL TRAINING

Law Society Professional Training (LSPT) continues to be the main provider of continuing professional development (CPD) education to the solicitors' profession in Ireland.

Training ranges in duration from half-day events, masterclasses (run over weekends), to longer part-time courses. As well as the on-site courses at Blackhall Place, Professional Training offers a suite of online courses and low-cost regional Skillnet Cluster events.

Law Society Professional Training incorporates Law Society Finuas Skillnet. All solicitors' firms and private sector bodies can apply for annual membership of Law Society Finuas Skillnet, which will make them eligible for discounts on relevant training programmes. Public-sector bodies can also avail of discounts through membership of our public-sector subscription scheme.

CPD training specifically designed for the in-house solicitors in the private and public sectors includes the:

- Annual in-house and public sector panel discussion,
- Annual in-house and public sector conference, and the
- Annual in-house regional event.

CPD training events that are also relevant to in-house solicitors in the private and public sectors include:

- Masterclass in commercial contracts,
- Masterclass in intellectual property law and technology,
- Executive leadership,
- Executive coaching,
- FinTech symposium,
- Certificate in professional education,
- Practical legal research skills workshops,
- Masterclass in planning and environmental law,
- Regional Skillnet cluster events, and
- A suite of online social media courses.

LSPT also offers bespoke in-house training, which can be delivered in-house at an agreed venue. Full details of the CPD programme can be found at [www.lawsociety.ie/cpd](http://www.lawsociety.ie/cpd). LSPT also produces a bimonthly legal training e-zine with updates on CPD events. All training events can be booked online, by phone, or by post. For further details and assistance, email [lspt@lawsociety.ie](mailto:lspt@lawsociety.ie).

## DIPLOMA CENTRE

For over 20 years, the Diploma Centre has been providing part-time postgraduate courses specifically designed for solicitors, with a selection of its courses tailored for in-house lawyers. It has a loyal, highly knowledgeable faculty of lecturers who draw on years of practical experience in the delivery of course content. Their expertise, combined with a unique blended-learning model, allows the Diploma Centre to constantly deliver top-quality courses in a way that suits busy professionals.

The Diploma Centre's supportive student-centred model ensures that the needs of course partic-

ipants remain the focus of its approach. In addition to the courses, it offers an annual CPD bonus conference, meaning that course participants are able to satisfy their annual CPD requirements.

### DIPLOMA IN IN-HOUSE PRACTICE

As part of the Spring 2018 programme, the Diploma Centre offers the Diploma in In-house Practice. The course provides in-house lawyers or aspiring in-house lawyers with a comprehensive understanding of the varied, challenging, and stimulating work that confronts those working in business and in the public sector. Whether you are currently employed as a general counsel, head of legal, corporate attorney, or in a general in-house role in the private or public sector, and you are keen to develop skills and further your legal knowledge, this course will be of interest and benefit to you. This course will also appeal to those who aspire to a career in-house outside of private practice.

### CERTIFICATE IN STRATEGIC DEVELOPMENT FOR IN-HOUSE PRACTICE

Following a successful inaugural run in Autumn 2017, the Certificate in Strategic Development for In-House Practice will recommence again in Autumn 2018. This certificate (designed in collaboration with the In-house and Public Sector Committee) is geared towards in-house counsel in both commercial and public-sector organisations who wish to contribute to the growth and direction of their organisation through the development of their own in-house practice. The course harnesses participants' commercial awareness and focuses on developing the capability to identify opportunities for expansion and innovation, along with the know-how to take advantage.

### OTHER DIPLOMA CENTRE COURSES

The Diploma Centre also regularly offers other courses that may be of interest to in-house solicitors, including the Certificate in Company Secretarial Law and Practice, the Certificate in Commercial Contracts, the Certificate in Data Protection Practice, and many more.

For further information or assistance, contact Dr Freda Grealy, head of the Diploma Centre, at [f.grealy@lawsociety.ie](mailto:f.grealy@lawsociety.ie) or tel: 01 672 4802.

### REGULATORY GUIDANCE FOR IN-HOUSE SOLICITORS

The Law Society's Practice Regulation Section has produced the [Regulatory Guide for In-house Solicitors Employed in the Corporate and Public Sectors](#), available on the Society's website. The section provides guidance on these regulatory matters and can be contacted at [pc@lawsociety.ie](mailto:pc@lawsociety.ie).

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