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General (In-House) Counsels in Brazil: career, professional profile and a new role¹

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Abstract: This paper discusses who the legal directors are in private companies in Brazil, emphasizing their profile, career, and performance, focusing on the period of 2008-2013, investigating changes which have occurred to legal departments in those companies, and to legal directors' careers. Our argument is that since the expansion of legal departments in Brazil in the 1990s, with expanding privatizing of companies and further opening of the Brazilian market to foreign capital, the profiles and careers of legal directors have undergone several transformations, culminating in more value and prestige being given to those professionals inside companies. This paper explores these transformations and the a series of implications generated for the corporate legal market in the country, ranging from changing the criteria for hiring professionals, to creating new demands for more sophisticated legal services.

Keywords: legal directors; legal departments; General Counsel; Brazil; globalization.

Contents

Introduction	3
1 Who are the legal directors of the companies in Brazil?	6
2 Legal departments in company: structure and operation	12
3 In-house career – duties and perceptions on prestige and heightened value	21
Final considerations	29
References	32

Introduction

The title “in-house counsel movement” has been used since the end of the 1980s to describe the American phenomenon entailing numeric growth, increasing prestige and growing professional value given to corporate lawyers or interns – known as ‘in-house counsel’ (ROSEN, 1989; WILKINS, 2012).

Rosen (1989) focuses on how corporate lawyers went from being “kept” counseling in the 1920s, and from “tame lawyers” in the 1950s, to the status of “in-house counsel” in the 1980s.

In the 1980s, much research aimed at studying the legal department in American companies had already identified a phenomenon in which these departments, as well as their directors, were increasingly valued. According to Chayes and Chayes (1985), legal departments were growing not only in size, but also in importance.⁴ Hence, the position of legal director in large corporations in the US was also gaining relevance, given that these professionals began taking part in the strategic decision-making process and integrating higher levels in the corporate hierarchy as members of management and the board of directors (senior management).

The authors also show there was a trend of carrying out new types of legal services and implementing new methods when managing conflict. Legal departments have begun performing new activities, such as: (i) preventive legal consulting, foreseeing potential conflicts by implementing long-term planning and establishing managing plans for litigation; and (ii) managing legal services that are developed by outsourced law firms (CHAYES; CHAYES, 1985, p. 200).

Wilkins (2012) states that almost three decades after these studies and the creation of this title, the trend of enhancing the value of in-house counsels is not over. And the perceptible implications of the theory that prestige is on the rise include: the role of counselors that legal executives play when advising and solving legal needs in their companies, deciding what will be done internally and what will be assigned to outsourced firms, and choosing those firms, acting as gatekeepers, to outsourcing company work to law firms, not to mention the increasing participation in strategic decisions in companies, sitting on company boards.

⁴ “Not only have the offices grown in size, but in importance as well. The General Counsel sits close to the top of the corporate hierarchy as a member of senior management. There is a comparable increase in the importance and complexity of matters dealt with internally”. (p. 277).

Between the mid-1990s and the 2000s, their importance grew even more in the US due to changes in corporate criminal law, drawing more attention to the rules of compliance. So, in-house counsels and legal directors began playing a central role in the decision-making structure of American companies, working both as key actors in the business and guardians of the companies' reputations and values (LIPSON et al., 2012; WILKINS, 2012).

A relevant fact to help understand this new dynamic and this new role is the percentage of US legal executives who sit on senior management teams, which, between 2005 and 2010, went from 47% to 62%, according to Deloitte data (LIPSON et al., 2012, p. 240).

Given this context of the ever-expanding reach of corporate lawyers, Wilkins' thesis (2012) is that the trend of heightening the value in-house attorneys is expanding to developing economies, especially the BRICS, insofar as globalization has intensified – not without considering local pressures, practices and rules which challenge some aspects of the in-house movement.

In this article we aim at creating a dialogue with this thesis of heightened value reported in the American context, but taking the Brazilian context into consideration. Our purpose is analyzing who the legal directors are in private companies in Brazil, emphasizing their profile, career, and performance. We intend to identify how the career has developed over time, focusing on the last six years⁵, and what the current framework is, considering the effects of a more liberal economy and other aspects of globalization. In order to achieve this purpose, this article presents two central analyses: (i) how legal departments are structured and which major changes have occurred (to the legal departments) in active companies in Brazil, and (ii) how legal directors' careers in these companies are structured and what the main changes to such careers have been over time.

Here we follow Wilkins' proposal (2012) to examine six indicators to establish this discussion: (i) the size of in-house legal departments; (ii) the demographic profile and the education of the lawyers who work in these departments (especially the legal directors); (iii) the allocation of authority and the relationship between in-house and outsourced work; (iv) the position, competence and authority of in-house lawyers within the organization; (v) the professional status of corporate lawyers as a whole, (vi) and the participation and influence of in-house attorneys in debates on public policy and legislation.

⁵ The focus on the last six years (2008-2013) is due to the availability of secondary data, even though through qualitative interviews our goal is to cover the period since the 1980s, when the phenomenon of heightening the value of in-house counsel gained strength in the US.

To do so, the research relies in primary and secondary data on the profile of both institutions (i.e. companies' legal departments) and personnel (especially legal directors). The secondary data were gathered and systematized using information available in the *Análise Executivos Jurídicos e Financeiros* magazine, from 2011 to 2013⁶. This information enabled putting together a database containing 1,032 companies and 800 legal executives. The primary data were generated from semi-structured qualitative personal interviews with legal directors and former legal directors from 14 companies in several sectors of the economy, and which are part of the 1,000 largest companies in Brazil in 2013, according to Brazil's newspaper ranking *Valor Econômico*⁷.

Our argument is that since the expansion of legal departments in Brazil, which gained strength in the 1990s with expanding privatizing of companies and further opening of the Brazilian market to foreign capital, the profiles and the careers of legal directors have undergone several transformations, culminating in more value and more prestige being given to those professionals inside companies. These transformations have generated a series of implications for the corporate legal market in the country, ranging from changing the criteria for hiring professionals, to creating new demands for more sophisticated legal services. Thus, this article presents who the legal directors working in private companies in Brazil are, how their departments are structured and what the perceptions of legal executives are with regards to their career and their role inside the company, as well as addressing the transformations that legal departments, professional profiles and careers have undergone.

Our analysis is in tune with the research done by Nelson and Nielsen (2000), which, by questioning how in-house lawyers and legal directors establish their responsibilities within companies, identified in the varying answers several different professional roles being played by in-house counsel, depending on the circumstances in which they find themselves. Based on this, the authors have developed three ideal types to summarize these roles: 1) *cops*, limiting their work strictly to legal analysis; 2) *counsel*, equally combining legal counsel and business; and 3) *entrepreneurs*, who prioritize business goals and company management, in detriment to legal analysis.

It is worth mentioning that such roles are not restricted, but they represent the most predominant aspect of legal executive work. That is, legal executives may be dedicated

⁶ Details on the publication are available at: <<http://www.analise.com/site/publicacoes/exibe/5/analise-diretores-juridicos-e-financeiros>>.

⁷ *Ranking Valor 1000*, 2013 edition, available at: <<http://www.valor.com.br/valor1000/2013/>>. Accessed on: April 21, 2014.

strictly to legal analysis of a contract, but their main job inside the company is legal counsel and in the business area. Therefore, in this hypothetical case, they still play the role of a “cop”, but the core of this work is related to the role of “counsel”.

Within Brazilian legal directors, we also sought to verify if and how they relate to these different roles, and if there could be other standards here.

The article is organized into three sections: one aimed at the profile and the career path of legal directors, another dedicated to the profile of the departments and their dynamics, and one final section dedicated to the work done by the directors and their views on the career, their importance and prestige.

1 Who are the legal directors of the companies in Brazil?

In the 1960s and 1970s, there were few companies in Brazil that had an in-house legal department, but this was already common practice in multinational companies, such as Union Carbide, Goodyear, Cargill, Light, Firestone, among others.

The role played by legal directors consisted of basically taking care of the taxation aspect, taxes on the circulation of goods, imports and exports, dealing with suppliers and clients contracts, and handling labor matters. For more complex and out-of-the-ordinary issues, in general, external legal counsel was hired – mostly Brazilian firms recommended by head office (Pinheiro Neto, Demarest Almeida, etc.). It was only in the 1980s that legal directors started obtaining more autonomy to outsource services. In spite of this autonomy, their participation in the strategic decision-making in the company and on boards was still rare.

It is important to note that during this period the career was predominantly male – much like undergraduate Law Schools which were mostly full of young men.⁸

By the end of the 1990s, more specialized legal services within companies had come to the fore due, in part, to privatization and the rise of more sophisticated and specialized demands. In general, our interviewees indicated that with growing globalization, and the

⁸ According to data on the INEP Report, “Women in Higher education in Brazil 1991-2005”, up to 2005, the number of men enrolled in law courses was still higher than that of women. National data showed that 51.1% of enrollments in law courses, in 2005, were made by men, while women accounted for 48.9% (p. 198).

arrival of more foreign capital in Brazil, it became more and more necessary for legal professionals working in the corporate world to have a more complete background, giving more value to corporate specialization, that is, knowledge on business, accounting and international law.

Zooming in on detached data over the last six years, we notice that, although the career continues predominantly male-oriented, the ratio of women occupying the position of legal director is increasing gradually, rising from 31% in 2008 to 35% in 2013 (*see chart 1*). Considering the total base of 800 executives, we see 63.5% males and 36.5% females. Therefore, it is possible to see that the number of women at the top of in house counsel career is smaller than the number of men.

Chart 1. Ratio of male and female professionals among legal executives, from 2008 to 2013

Source: Data compiled from *Análise Executivos Jurídicos e Financeiros*

Considering this gender distribution, one of the interviewees, from the banking sector, stated that departments have seen more and more women in lower and intermediate positions, but in management and director positions, there are more men –this is confirmed when we observe the data over the last few years. This is often attributed to mobility, that is, the preponderance of men in these positions is due to the greater likelihood that they will be more suitable to the issues of mobility and the career profile, in comparison to women.

Of eleven (management positions), we have four women. (...) we have 22 local offices, which we call regional branches. Wherever there is a Commercial Director, there is legal counterpart alongside. So, these people have been to many places. And, mobility for a woman is a little more complicated than for a man. Often,

women do not venture out and do not go as far in their career because of that. (Male legal director, age 46-55, banking sector).

In regard of educational background, the vast majority of executives in charge of legal departments in companies have majored in Law (98%), and most of them come from a traditional Law School in São Paulo, such as USP, PUC and Mackenzie, and many of them have specializations or MBAs in Business and Accounting.

As for age, some 18% is up to 35 years old; 48% are between 36 and 45; 23% are between 46 and 55; and only 11% are over 56 years old; the average age for the 800 executives is 43 years.

In terms of time since graduation, we found that 13% of the legal executives graduated up to ten years ago; 49% finished school between 11 and 20 years ago; 27%, between 21 and 30 years ago, and 11% have been out of school for 31 years or more; 19 years was the average.

As can be seen, virtually all the in-house legal directors have a Law degree. However, how do these professionals assess their education at university considering their performance as legal directors? Most of those interviewed pointed out that knowledge and abilities acquired at Law School are important, but insufficient to carry out most of the duties required by legal directors. Many say that the knowledge acquired in college, in general, did not contribute to the everyday life of the profession, which encouraged them to seek out courses in other areas related to human resources, business and project management, among others.

Also, it is interesting to notice that the answers show a relatively smaller importance placed on technical-legal knowledge as each one advances in their career.

And I think that when you work for a company and climb their corporate ladder, you leave a little behind, (...) the technical part, and start to manage things based on experience, based on the team (...). (...) Because the company dynamic is quite fast-paced, (...). (Male legal director, age 36-45, telecommunications sector)

International experience was also mentioned by interviewees as a key element to improving their management capacity and their performance in multinational companies. Getting to know other cultures and speaking other languages are vital needs in a globalized world, and professionals must pay attention to this. One of the professionals interviewed even mentioned, very clearly, the importance of academic and professional experience abroad, claiming that the experience of studying and working in other countries was responsible for opening many doors in the corporate world.

One thing I consider important for people working in a multinational company is international experience; you have to travel abroad, you need to know how it works. For various reasons: for your professional level, (...), but also, within the company, for you to operate globally, you must know how other cultures work. (Male legal director, age 36-45, food sector).

Considering international experience, we see that 20% of legal executives have studied abroad, and 17% of this total in the Business area and 83% in a Law School. Of these people with experience in other countries, some 37% say that they took a Master's degree, 32% took an LLM, 15% got a graduate certificate degree, another 15% got an MBA, and 1%, a Ph.D.

The most popular destination for education abroad is the US, accounting for 44% of the total, and the United Kingdom, with 13%, two of the main attractions for Brazilian lawyers, even though these are countries with tradition in common law. These data allow us to establish a dialogue with the argument that indicates a trend in which Brazilian law – *civil law* – is being influenced by common law (FARIA, 2008). There are other countries such as the Netherlands, Switzerland, Spain, France, Germany, Portugal, followed by Japan, Canada, and Australia (see *chart 2*).

Chart 2. Countries where Legal Executives go to study abroad

Source: Data compiled from *Análise Executivos Jurídicos e Financeiros*, from 206 executives who declared having studied abroad.

There is wide array of destination institutions, and most students seek the Hague Academy of international Law, with 12%, followed by UCLA and IIMD, both with 9% (see *chart 3*). In the cases when interviewees had taken more than one course abroad, we registered the experience that they considered the most relevant to their background.

Chart 3. Places Where Legal Executives go to study abroad

Source: Data compiled from *Análise Executivos Jurídicos e Financeiros*, from 206 executives who declared having studied abroad.

Taking into account how young most legal executives are, we see that most international experience is recent, dating from 2001 onwards, – 69% studied abroad in this period; 24% between 1991-2000, and 7% studied abroad between 1979-1990.

It is important to note that, although only 20% of the professionals interviewed by *Análise* magazine have had experience studying abroad, almost all legal executives have a (post) graduate degree, even if acquired in the country – 62% of them have a *lato sensu* graduate certificate or degree; 30% have an MBA; 19% have a Master's degree (including LL.Ms); and 1% have a Ph.D.

As we have already pointed out, most of those interviewed wish to further their education and to be more up-to-date through graduate degrees and certificates, LL.Ms and even MBA, because they feel their education has a few gaps when it comes to working for companies, especially from the business perspective (business administration), or in specific areas of Law, such as: infrastructure, electronic law, intellectual property, new types of contracts, environmental law, among others.

Besides educational background data, this research detected that between 2011, 2012 and 2013, turnover was 21%, i.e., some 217 of the 1,032 companies changed their main legal executive. Considering that the legal executive is the highest position in a company's legal department, most of the time, there is nowhere to go. The turnover in this position may indicate a search for advancement through a change of the career path. Thus, the exit of legal executives could be because they have reached the highest position in the company and no

longer have perspectives for professional growth there. This is a hypothesis that would require more empirical evidence to certify, but throughout the interviews we were able to see indications of this trend.

In the data obtained from 800 legal executives, we see that most started at their respective company in the 2000s – and 40% started between 2000 and 2007, while 33% began between 2008 and 2013 (*see chart 4*).

Chart 4. Period when Legal Executives started at the Company

Source: Data compiled from *Análise Executivos Jurídicos e Financeiros* magazine

For 720 of these legal executives, the date they took the position where they are now is readily available. With that, it is possible to calculate how long they took to reach the position of legal executive: some 30% of them started at the company as the main legal executive (the vast majority of them were hired by the company between 2008-2013), and half of them took up to two years to reach this position. The average time for promotion is 4.9 years⁹ (standard deviation of 6.9 years).

For some of these executives, we were able to trace their experience prior to entering their current company: at least 37% had professional experience in other companies, 16% of them had professional experience at law firms, and 4% in positions in the government (*see chart 5*)¹⁰.

⁹ Of those interviewed, the longest time to ascend to the position of legal executive was 41 years.

¹⁰ This information is seen as the minimum reported, because, as explained in the methodology, not all interviewees offer complete answers. In fact, a little over half of them (54%) did not offer information on their career path.

Chart 5. Legal Executives' Prior Experience

Source: Data compiled from *Análise Executivos Jurídicos e Financeiros*

2 Legal departments in company: structure and operation

Considering the 1,032 companies in our sample, we see that half of them have up to five lawyers in the legal department, while the average is 11 lawyers, with a standard deviation of 29.2. Banks have the highest number of lawyers – in the private sector, companies with the highest number of lawyers are: Itaú, with 427 lawyers on the team; Bradesco, with 421 lawyers; and Oi (telecom), with 150 lawyers.

Chart 6. Size of the legal departments according to the number of lawyers on the team

Source: Data compiled from *Análise Executivos Jurídicos e Financeiros*

Gender distribution on the team has changed over the last few years. In 2008, it was predominantly male, with 66% male lawyers. In 2009, this scenario began to change, with men corresponding to 52% of the whole team; in 2010, 51% of the team were male lawyers and in 2011 the majority were female, representing 51% of the body of lawyers. And in 2013, some 54% of the team of in-house lawyers was female (*see chart 7*). Therefore, currently, there are more female lawyers than male lawyers in legal departments, but this reality is still not reflected at the top of the legal career in companies, given that most legal executives are men (*as seen in chart 1*).

Chart 7. Ratio of Male and Female Lawyers Legal Departments, from 2008 to 2013

Source: Data compiled from *Análise Executivos Jurídicos e Financeiros*

The average age of lawyers working in the surveyed legal departments is 37 years old; some 14% are under 29; 59% are between 30 and 40; 18% are between 41 and 50; and 8% are 51 or more.

The time average since graduation is 12 years, while some 18% having graduated up to five years ago; 28%, between six and 10 years ago; 41%, between 11 and 20 years since graduation; and 13% became Law Alumni some 21 years ago or more.

In terms of team specialization, some 68% have some sort of *lato sensu* graduate certificate degree, while 19% have an MBA; and 8% have a Master's degree (including LLMS).

In terms of technical and support teams (including administrative personnel and interns) half of the legal departments have up to three employees, while the average is 10 employees, with a standard deviation of 42.

Considering the whole team, lawyers and other employees in the area, some 30% of the departments have up to five people; 29% have between six and 10 people; 34% between 11 and 50; 4% between 51 and 100 people; and 3% have over 100 people on the team (see *chart 8*).

Chart 8. Total size of legal departments (total of lawyers + support team)

Source: Data compiled from *Análise Executivos Jurídicos e Financeiros*

It is important to understand how these departments are structured, given that in most interviews we were able to notice at least two general models: the first is organized per legal area and areas of activity; the second has further divisions, the structure is based on regional subdivisions, according to the company's regional presence and market share in the country.

One example of the first model is a company in the foodstuff segment, which structures divisions in terms of operational management (including civil, labor, criminal law, contracts); strategic corporate management (corporate); tax management; equity management (health surveillance, administration, and regulation); and ethics and compliance.

One of the simpler organizational types we came across in our interviews was a department organized into three areas: litigation, contracts, as well as corporate and consulting.

Another structural example we found was: tax; civil; commercial; environmental; labor; corporate; industrial property; compliance; and contracts, for which there was one management department for each of these nine branches reporting to the legal department.

As for the second model, which, besides this 'per-area' structure, establishes regional subdivision, we identified a legal department with management departments across several states in the country reporting directly to the São Paulo headquarters, which is organized per area.

Another relevant aspect to understand how departments work is the internal allocation of work and how much of the demand is farmed out to law firms. From the interviews, we identified a logic that is a common denominator in such allocation: volume demands (litigation – consumer and labor), tax, fiscal and specialized demands (criminal and intellectual property) tend to be mainly outsourced. As for demands related the everyday activity of the business (core business), they tend to be kept in-house (contracts, consulting, operational, corporate, commercial, administrative) (*see chart 9*).

Yes, we use outsourced services, what we seek is to preserve core business and to invest in in-house training to deal with the activities that are the core of the company – large-scale contracts in the area of supplying material, the corporate part, the labor part. Now, in labor law, for instance, what may be a more commonplace activity, we outsource. Or when we need an opinion on specific legislation in another country, we also turn to that [outsourcing]. We turn to them in high-expertise cases, in which we either do not have the experience here, or when the time required to reach that same level of expertise does not justify solving it in-house. But the activities that are very close to a recurring and vital activity for the company, selling products, purchasing materials, the aim is to invest and have professionals capable of handling these negotiations internally. (Female legal director, age 36-45, transport sector)

One difference we noticed from the 1960-1980 period to the present is that tax law has become increasingly outsourced – 70% of companies hire law firms or consultants for this. The departments that try to keep tax internal, on the other hand, have a specific area to handle tax and fiscal matters that may or may not be part of the legal department.

In addition, it is worth highlighting that most contractual matters of the company are dealt with by their own legal department, and it is uncommon for this kind of service to be outsourced.

Chart 9. Distribution of in-house work (department) versus outsourcing (law firms) per area

Source: Data compiled from *Análise Executivos Jurídicos e Financeiros*

What are the firms' criteria for opting for outsourcing? There is some evidence in the publication known as *Advocacia 500*, which interviews a selection of legal executives on contracting criteria and also the motives for interrupting the contractual relationship between companies and law firms. This matter was also addressed in the qualitative interviews carried out by the authors.

Analyzing the publication's data, one can see that between 2008 and 2013 executives starting giving more importance not only to legal fees, in a cost contention policy, but also to the firm's expertise in the company's area (expertise in the economic sector in which the company is present), and to the personal relationship with partners (*see chart 10*).

Chart 10. Aspects legal executives take into account when hiring a law firm (% very important)

Source: *Advocacia 500*, editions from 2008 to 2013

The data above were corroborated by the perception of our interviewees, especially when it comes to contracting law firms that take care of companies' litigation issues and everyday matters. In fact, the law firm's reputation was mentioned as one of the main criterion for outsourcing its legal services. Reputation is tied not only to acknowledging the quality of the services provided by the firm, but also to integrity and ethics when performing their duties.

Obviously, quality is a very important aspect, the way this firm works, so there must be quality, there must be very strict ethics concerning compliance, just like the demands of the company. (...) if you have a specific subject, then the firm's expertise in that particular subject is also something to be weighed up. (Female legal director, age 46-55, vehicles and auto-parts sector)

Besides the quality of services provided and the ethics of the professionals when performing their duties, several interviewees mentioned a concern in hiring law firms that

were not only capable of handling their demands in different parts of the country, but that also are up to speed on the local reality, so that they can keep a close eye on the course of the lawsuits, they can attend hearings etc. That means, often, contracting a law firm is determined by their regional reach. For this reason, larger firms will not be hired, but rather smaller offices that cover a specific part of Brazil in order to care for the needs of mass litigation, which is spread across all states, taking into account the broader reach of the companies interviewed.

[The criteria for contracting is] the excellence of the firm in that area and that region. So let's assume there is an issue, that is facing an environmental issue in the state of Mato Grosso. I will not go after the best law firm in Brazil, I look for the best firm in Environmental Law in the state of Mato Grosso. Because this is where they know the regional institutions, where they know the rocky roads, where they will be able to articulate with the judge in question, because they may be a local professor, someone well known. So there isn't such a thing: let's hire the best environmental law firm to deal with this. This does not happen (...) exactly because of this [regional contracting] there are [no favorite firms]. (Male legal director, age 36-45, foodstuff sector)

Legal fees are another important factor when hiring, given that this generates high costs for companies:

Another important criterion is to have (...) a cost/benefit ratio. (...) you work on a budget, so this is also part of the lawyers' role. (Female legal director, age 46-55, vehicles and auto-parts sector)

Data from *Análise Advocacia 500* present the main reasons companies end up hiring this or that law firm to handle litigation and typical everyday issues. But, based on the qualitative interviews, we noticed that when it comes to more sophisticated matters, interviewees revealed a reason that is not contemplated in the chart above, that is, the professional profile and the lawyer's reputation. According to those interviewed, beyond the firm's reputation, the key justification for contracting a certain firm is determined by the presence of a specific lawyer, due to their technical knowledge and expertise on the given subject, with whom a relationship of trust is established. This argument appears to justify hiring both Brazilian and international law firms.

In terms of the profile of hired law firms, we see an important and significant change over a five-year period – a migration from hiring full-service firms to specialized firms – which we had already noticed when analyzing outsourcing areas and the areas kept in-house (see chart 11).

Chart 11. Type of law firms that companies prefer to hire

Source: Advocacia 500, editions from 2008 to 2013

The search for more specialized law firms reveals that companies have been looking for more individualized treatment, establishing longer lasting partnerships based on a relationship of mutual trust. One of the interviewees shows why he has been searching for more specialized firms instead of resorting to full-service firms, when more complex and delicate matters are involved, such as mergers and acquisitions (M&A).

Many larger firms turned out not to be partners, you start with the senior partner and then get moved to a junior associate, and we want special treatment, which is hard. (...) So, for instance, to be a part of CADE¹¹, we use boutique law firms, (...). Because the treatment is personal, they know the company in detail, we communicate just with a look. So when they arrive at a meeting with the business area, they already know the whole context. (Male legal director, age 36-45, foodstuff sector).

Besides the criteria for hiring law firms, *Análise Advocacia 500* magazine also asked about the criteria employed when deciding to terminate a contract, which revealed changes in the importance of such reasons between 2008 and 2013 – the relevance of the relationship with partners increased over these five years, as well as containing costs and demanding results reached through the firm (losing a case now matters more). In spite of these differences, a drop in the quality of services provided by the law firm is still the main reason to keep a legal director from hiring a firm for future services (*see chart 12*).

The main difference found between 2008 and 2013 as far as reasons to terminate a contract with law firms relates to the need to cut back on costs. In 2008, terminating the

¹¹ Administrative Council for Economic Defense (*Conselho Administrativo para Defesa Econômica*).

contract relationship with a law firm due to a cut in expenses was mentioned by 37% of the interviewees, and in 2013, this reason was appointed by 51%.

As far as the importance of relationships with partners, it is noteworthy that, in 2008, some 77% of legal directors mentioned that one of the reasons to end a contract with a law firm was the deterioration of the relationship with the partners of the contracted office. But in 2013, the relevance of this reason increased, given that it was presented by 84% of the interviewees. Besides this, it is worth highlighting that, in 2008, some 50% of those interviewed mentioned the firm's loss of an important case as the reason to terminate the contractual relationship. In 2013, that percentage reached 57%. That is, personal relationships, the level of rapport and knowledge on how the business works have been important factors in maintaining partnership relationships between companies' legal departments and law firms.

These results also show that legal directors, in charge of choosing the firms hired, also exert more control over contracting, demanding more quality in the legal services provided and revealing a greater concern for the budget available to hire such law firms.

Chart 12. Reasons to terminate a contract with a law firm

Source: *Advocacia 500*, editions from 2008 to 2013

In the 2013 issue of *Análise Advocacia 500* magazine, there is new information referring to the criterion that weighed the most when terminating a contract with a law firm *in the previous year*: some 55% of the companies that answered the survey declared they had not ended relations with any law firm over the previous year, 26% did so due to the poor quality of services; 4% due to a damaged relationship with partners; 5% due to the fees charged; and 10% for other reasons, not specified.

Interviewees were also asked about the current intention to terminate the relationship with a law firm. In answer to this question, some 69% said that they are not thinking about

ending any current contracts; 17% said they may be considering ending the relationship due to the quality of services; 5% due to costs; 3% because of damaged relationship with the partners; and 8% for other reasons, not specified.

One of the expected impacts of globalization on Brazil's legal corporate market is the relationship with and contracting foreign law firms. According to *Advocacia 500* magazine, in 2013, some 40% of the companies declared they had hired international law firms that work outside Brazil; and 30% hired the services of foreign law firms that practice law within the country.

So what types of demands make companies seek out the services of foreign firms and based on what criteria are they selected? Based on our interviews, we identified that they happen in specific situations, involving mergers or acquisitions, or when there are specific fiscal doubts related to the business operations in certain countries. In general, multinationals have their legal department and their lawyers from the country of origin aiding the legal department in Brazil with more everyday and regular matters of the company.

Look, we have had (...), some operations in which the [company] hired a global firm. (...) But (...), in our day by day, we hire local firms, and if you have some issue for which you might need legal assistance from another country, (...) then we get in touch with our headquarters in the US. (Female legal director, age 46-55, vehicles and parts sector).

Obviously, there are transactions that require counseling from foreign firms and then you hire someone from abroad, but, these are specific situations involving foreign legislation. **[And do you have a favorite, how do you choose this foreign law firm?]** There are no [*favorite*] law firms, so you go by the brand. Because you don't have a choice, because there is no other option. Until you establish a trusting relationship and get to know the local market, you are held hostage by the brand. (Male legal director, age up to 35, energy and infrastructure sector)

These are operations involving extremely high values, so all of this leads to choosing the best professionals. (...) In these transactions, there are many interests involved. In general, the shareholders, the company's reputation, the image, the president, the main executives are involved. So you look for someone who is a consensus in terms of trust, quality, reliability, and so on. (...) I believe that on the whole planet most people based their decision on the lawyers' know-how, the experience not only of the firm, but also of the lawyers involved in the operation, and their availability. Sometimes when you are in a very aggressive market, you say: wow, something is happening there, but the guy is busy with two other operations, I would love to, but it is better not to choose them because they won't be able to handle it. (Male legal director, 36-45, tourism sector)

Usually, the data show that hiring law firms, whether they are local or foreign, also depends on the budget offered to the company's legal department. There were few companies that revealed the department's budget due to strategic issues in the market. Of the few that answered, the annual budget of the legal department in the companies that answered the

survey varies between R\$ 11 million up to R\$ 174 million. Companies in the vehicles and auto-parts (automotive), retail, and the foodstuff sectors revealed a budget of up to R\$15 million/year. The highest budget was presented by the banking sector, over R\$ 100 million.

Beyond the total budget, we are interested in knowing how costs in legal departments are divvied up to pay employees and contract other firms (as well as general expenses). As the interviews show, most of the budget is allotted to hiring law firms, varying between 60% and 75% of the annual total.

One fourth of my budget goes to the payroll, the other three fourths are divvied up between outsourcing and general expenses (Male legal director, age up to 35, energy and infrastructure sector).

In proportion, I would say that 60% of the budget for service providers goes to these collaborators [outsourced lawyers], and 40% goes to the payroll, people hired here as employees. (Male legal director, age 36-45, foodstuff sector).

The fact that the larger share of the legal department's budget is spent on outsourcing services does not mean that the whole cost of legal services is comprised in legal departments. Some of the professionals interviewed said that it is common for the sector responsible for the existence of a lawsuit to bear the expense it generated.

An interesting piece of information is related to the fact that not always is a hired law firm paid for by the legal department. In one of the companies interviewed, for example, the business department pays for hiring the law firm, and not the legal department. The interviewee in question pointed out that if the payment of law firms were made using the legal department's budget, one third of it would be allotted to law firms.

Thus, what the interviewees say suggests there is a wide variety when it comes to how legal departments use their budgets and divvy up their expenses to payrolls and contracting external firms. Considering this, it is not possible to identify a pattern, because contracting and structuring departments depends highly on the nature of the business of each company and how expenses are managed.

3 In-house career – duties and perceptions on prestige and heightened value

How do legal executives perceive their role? There is a consensus among interviewees that there is the need for solid technical-legal knowledge, which is *sine qua non* when performing their duties accordingly. However, insofar as they develop in their company

careers, and grow in importance, occupying a more predominant role in the management of business, they understand it is necessary to aggregate technical-legal knowledge to a series of other abilities, especially those related to strategic planning, to risk management (compliance), leadership and people management. In other words, from the perspective of most of those interviewed, their profile is more distant from the “cop” standard and closer to a “counselor”, according to Nelson and Nielsen’s terminology (2000). The role of entrepreneur – a participant in decision making that aims at increasing profit – appears in the discourse of only a few interviewees, but it is present in the idealization of many who think about the future in the career and the company¹².

Nelson and Nielsen’s (2000) ideal standards were based on three aspects: 1) the extent to which the work of these professionals is limited to gate-keeping duties, and the more limited this role, the closer their profile is to the “cop” standard; 2) the scope of guidance and counseling offered, considering that the more restricted to legal counseling, the closer their role is to the “cop” standard; and 3) the nature of knowledge they claim to use in their work (that is, authority based solely on legal knowledge, or for additional reasons, such as know-how on the company, and the business); again, the closer to the technical-legal background, the more limited their role is to the “cop” standard.

All professionals interviewed mentioned having seen a heightened value of lawyers working within companies. This growing value is noticed both internally, within the company they work for, and in the legal world as a whole, by other professionals. One of the interviewees also claims that a company that gives value to their legal department is safer, because it “*takes less risk, this company does things better, it defends itself better.*” As for the compliance area, one of the interviewees pointed out that this is an important matter in the business area, not only in Brazil, but worldwide, and that it is important for the legal department to work closely with other areas in the company to build up and keep an ethical image of complying with rules.

There are some objective data indicating the increase of legal executive prestige. We see that 46% of senior legal professionals hold the position of director or vice-president, 35%

¹² One of our interviewees (age 36-45, metallurgy and steel mill sector), for example, claims he wishes the position of legal director in the company he works for to be similar to the role of the *consigliere*, as portrayed in the novel *The Godfather*, by Mario Puzo. The *consigliere* is a kind of consultant and advisor to the boss, who, in the book, has the additional responsibility of representing him in important meetings, actively participating in the family business. In the organizational structure, he is seen as the third most powerful, and is the one who has legitimacy to argue with the boss and oppose him when needed in order to maintain the good development of the business.

are managers, and the other 19% are senior lawyers or advisors, superintendents, among others (see chart 13).

Chart 13. Positions held by the company's main legal executive

Source: Data compiled from *Análise Executivos Jurídicos e Financeiros*

Analyzing these data over time, we see that senior legal executives who held the position of director or vice-president went from 23% to 35% between 2008 and 2013, in a clear trend of internal appreciation for this professional (see chart 14).

Chart 14. Ratio of legal executives that hold a director or vice-president position, from 2008 to 2013

Source: Data compiled from *Análise Executivos Jurídicos e Financeiros*

More evidence of this heightened value is the ratio of professionals in charge of legal departments that answer directly to the company's main executive, which went from 47% in 2008 to 65% in 2013 (see chart 15).

Chart 15. Ratio of legal executives that answer to the company's main executive, from 2008 to 2013

Source: Data compiled from *Análise Executivos Jurídicos e Financeiros*

We also have the areas that report directly to the legal executive – 10% of the departments are responsible for the administrative area; 9% for Human Resources; 8% for accounting and the financial area; 7% for the sustainability area; 5% for Investors Relations; 4%, for the communication area; 2%, for marketing; and 23% of the companies have a series of technical areas answering to the legal department, for example, the billing department, among others (*see chart 16*).

Chart 16. Ratio of legal departments to which other areas report, per area

Source: Data compiled from *Análise Executivos Jurídicos e Financeiros*

Changes in the role of legal director in companies over the last few decades, especially as of 1990, were a highlight mentioned by most interviewees. Firstly, we detected a movement which brings a considerable part of legal services inside the company, which used

to be, mostly, carried out by law firms that the companies hired. This trend does not span across all companies, but has been commonly seen among the largest and most profitable businesses.

(...) my perception of the market is that it has developed upwards over the last few years. Since I started working as an intern there were already legal managers and directors inside the company. I believe this is a trend [...] that was created, I would say, at least, as of the 1980s and 1990s, to bring legal services and all inside, but maybe even before that. I am talking about more developed companies, larger companies, the more structured ones.

(Male legal director, age 36-45, tourism sector)

Based on the interviews and secondary data, it is possible to clearly identify the transition of the lawyers' role in the company, in the sense of ideal standards as addressed by Nelson and Nielsen (2000). When we look at the Brazilian situation, we can condense all three ideal standards into two company categories that distinguish themselves by the heightened or lesser value the company's *core* business gives to their internal legal departments.

The first comprises companies that consider the legal department a mere support area, which is sometimes consulted by other sectors to solve specific issues. The role played by these legal departments is secondary, designed basically to manage litigation and to contract external law firms. Their legal directors are not usually called in to participate in the strategic decision-making process pertinent to the company's business, and they do not participate in board meetings, not even informally. Thus, they would be seen as "cops", or as a necessary evil.

Among the hundred largest companies, a subgroup from which we took our interviewees, this role is rare, but when we look at the bulk of the 1,032 companies, we see that there are still many companies working like this.

Here, we identified the first transition, from "cop" to "counselor", since legal executives took a more active and participative role in business. To sustain this transition, we may think of the previously-discussed evolution, over time, of the ratio of professionals responsible for the legal department and who answer to the company's main executive, as well as the ratio of legal executives who hold a director position. It is important to remember that the transition refers to the main role taken, and a legal executive can take on more than one of these roles.

In contrast, the second category of companies assigns more relevance to the legal department. In this case, the in-house legal department works more closely with the business

area of the company and is consulted in the strategic decision-making process. The role of legal directors, therefore, takes on more importance and steps into the fore where he is heard during the decision-making process on the launching of some product, on carrying out or not some merger and acquisition operation, on the risks involved in including operations in other regions throughout the country or worldwide etc. Besides these new duties, legal directors report directly to the CEO and become executive directors. Still, they are part of the Board of Directors, not as aides or secretaries, but as executives.

In this second group, a change is then visible in the legal directors' duties in comparison with the other group: when they start to work more closely with the business area of the company, they become part of the group in charge of making strategic decisions for the company, as other studies have already shown (CHAYES; CHAYES, 1985; WILKINS, 2012). By taking on larger responsibilities, legal directors became more valued, gaining more space in the decision-making process related to the company's core business. Thus, they are seen as "advisors", who balance within their duties the management of legal risks, but are also attentive to the business profile, acting preventively (in the sense of preventing risks) and suggestively (in the sense of adding value to the business, instead of only generating costs).

There is an important second transition, seen especially in multinationals and larger companies, where those responsible for the legal department went from "advisor" to "entrepreneur" standard, becoming more directly involved in the business, acting as business partners. An example is provided by a legal director in the transport sector, who, when asked about her role and duties in the company, mentioned changes in the sense of getting closer to the business area, which means the legal department is no longer seen as a mere "means area", but is now becoming a "purpose area" of the business.

I believe that if I compare the legal department [from 2004] to the current one, it is quite different, and I felt a move closer to the business area, that is, understanding the business, understanding what the company goals are, and helping achieve them. (...) We see a significant change in the lawyer's role, due to more acknowledgement of the role and the contribution the legal area can bring. And you start to think about the legal matter strategically, and not only as the aftermath of specific situations. And it is an image that becomes clearer on how to better handle increasingly more complex conflicts, international legal cooperation among several organisms, in increasingly more restricted situations, that also force companies to take preventive measures almost as if carrying out supervision through the company. (...) So in the course of the years we have noticed that accurate legal knowledge and strategic knowledge of the goals, the actual vision of the economic scenario, this vision allows you to follow, to anticipate, to make decisions more conscientiously (...). In the end, I believe there is a greater level of responsibility, especially on the legal professionals' part, towards the company's activities themselves. (Female legal director, age 36-45, transport sector)

Although on the rise, and more present among our interviewees, this role is still quite foreign to most in-house counsels, especially if we consider the ideal standard of “entrepreneur”. This confirmation is corroborated by the ratio of legal executives who participate in board of directors meetings, taking part in the decision-making process related to the company’s *core business*: of a total of 800 legal directors, only 10% have taken on the role of “entrepreneur”.

Legal departments, from the 1990s onwards, are no longer seen predominantly as a “necessary evil”. Strengthening ties of trust with other sectors of the company has given the legal department more importance inside the company.

At least here, until some time ago, it must be some 15 years, the legal department was considered a necessary evil. The arrival of foreign investors brought a new concept to the banks, didn’t it? Because you do not make any deals, you don’t talk to anyone from abroad, without a lawyer present. They may not say anything, usually they don’t, but they are there. Often, just for compliance. And the bank began to see the need for better staff, professionals who are better prepared to accompany the bank’s service. (Male legal director, age 46-55, banking sector)

This change in the paradigm concerning the legal department job description is attributed to several factors including Brazil’s economic opening in 1990, the privatization of strategic sectors for the economy, as well as the arrival of the compliance area, which often is in charge of the legal department in companies.

And, so, since then [the 1980s, 1990s] there has been a tendency to place value even more, on change, a little before it was a highly technical area, it used to be seen, I believe, until some 15, 20 years ago, as a technical area (...) operations grew increasingly, I think there was a huge opening trend in the country, especially from the 1990s onwards. There were the privatizations at the end of the 1990s, then a boom in IPO (initial public offerings) operations in 2003, 2004 up to 2008, before the financial crisis; this brought huge growth, not only the movement of the capital market, but also in mergers and acquisitions. All this, I believe, has only helped to add value to this position, the legal director, as a whole. I don’t think it is only the legal director, I believe it is the company’s legal department as a whole (...). (Male legal director, age 36-45, tourism sector)

We also attempted to assess if there was any change the interviewees would like to see in their role within the company and, if so, which they would be.

Although many interviewees detected a trend of heightening the value given to their role in the company, some still want more and suggest, for example, that legal directors should increase their participation in the company’s strategic decisions, especially those

related to operations that will be carried out by the company and those that involve establishing practices of corporate governance and transparency.

Finally, still concerning the legal directors' perception of their own careers, we asked them where they would like to go since they have already arrived at the top of the legal career inside the company. Many consider taking part in the company's executive area, but in some cases there are no lawyers on these boards. Considering that, some envisage the possibility of working in parallel areas, with the same hierarchy, but in areas more related to the company's core business.

I have reached the top, from here there is no where else to go, but I... this thing of becoming an advisor to the company, even the name says so, general counsel, to me is much more important, regardless of the department I am in. So I would like to go to other areas. Like, for instance, Human Resources, I see myself working for Human Resources. You know? In a couple of years, this is what how I would like to plan it, but for now there is a lot to do here, a lot to organize, and to make sure it is ready for a successor. (Female legal director, age 36-45, retail sector)

Others envisage the possibility of taking on a specific operation within the company, or even becoming consultants in their own businesses.

I have made it, but it is funny talking about the top, I see it as the end. I am 41, I don't think of myself as an old man, but... (...) there aren't many places for me to go now. So I think that depending on your age, being in this position is the celebration of a career, anyway, I think it is nice, and has to be valued. (...) And in my case, I see peers of mine, people who are my age, there is even this friend of mine who was in the same position, not in a big company like [name of company], a smaller one, but he left the legal area completely and took on an operation. This is a path I think I can (...) take too, if I stay in the company. Otherwise, you go back to private enterprise, as I call it, starting a firm, becoming a consultant. (Male legal director, age 36-45, foodstuff sector)

Another aspect of interest concerning legal executives is their involvement in the public debate on the legal system. Our goal is to understand how directors are placed in the public policies debate and if and how they perform so as to influence such debate. Thus, we initially asked our interviewees to use their own experience in order to reflect upon what the key changes are that they would like to see in the Brazilian legal system. And after they answered, we asked them about their involvement.

In their responses, two more common topics were the reforms to tax and labor law, seen as the most sought-after changes. Some also mentioned changes to the legal and in civil procedure law, as well as changes to the commercial code.

As for tax legislation, interviewees mentioned the need to standardize the countless rules regulating the relationship between citizens and the treasury, with the intention of avoiding fiscal conflict between states and enabling better quality control.

Some interviewees identified the sluggishness of the Judiciary branch as one of the most problematic issues in the country, whether it is because the slowness to judge cases generates uncertainties, or because some people have been misusing the legal system, getting rich at the expense of the justice system.

In many of these companies, especially those in the banking sector and other regulated services, there are lawyers in the legal teams working towards formulating proposals for legislative reforms, actively participating in the debate. But none of the legal directors interviewed mentioned being involved directly in the public policies debate, that is, none of them takes this role openly and directly, possibly because ‘lobbying’ in Brazil is interpreted and seen in a bad light, instead of a form of legitimate political pressure, possibly because lobbying in the country is unregulated.

Final considerations

The study of the legal directors’ profile in private companies in Brazil, as well as the structure and operation of their legal departments, is pioneer in the country. This is why it is not possible to make comparisons between or reference to other national studies on the subject. The works that establish a dialogue with this article are, mostly, North-American studies that were dedicated to analyzing this phenomenon of heightening the value given to legal directors since the 1980s in the US.

The main conclusion we can draw on the Brazilian situation follows a trend previously identified in this foreign literature: the increasing value and prestige of legal directors inside companies, whether it is due to the numeric growth of the body of professionals working in the legal departments, or due to the duties taken on by legal directors over the last few years, in the case of Brazil, more intensively since the 1990s with the privatizations and greater opening of the market to foreign capital. However, despite this heightened value, legal executives want more: in several companies they are seeking to broaden their influence and legitimacy inside their companies (NELSON; NIELSEN, 2000, p. 457).

This conclusion is based on three central elements: the views of legal executives and former executives interviewed, secondary data concerning to whom legal executives answer, and their hierarchic position inside the company.

Most of the interviewees believe there were important transformations to their role inside the company, generally shown by the increase in their duties as counselors in the company's strategic decisions, and not acting solely in contracts and judicial litigation areas. Also, in some companies, legal directors are now being called in to board meetings to participate in the decision-making process related to the company's core business – that is, they became part of the board. This notion, however, is representative of the reality of a small group of legal executives. The general data analysis on the position of 800 legal directors reveals that only 10% can be placed in the role of “entrepreneurs” (NELSON; NIELSEN, 2000).

Even though the “entrepreneur” standard may not be fundamental among legal directors in Brazil, the fact is there has been a trend of professional appreciation inside companies. This phenomenon is made evident from the data related to the hierarchic position taken on by legal directors inside the company over the last few years, and is expressed in two different ways. The first relates to the position of those responsible for the legal department of the company: data from 2008 to 2013 show an increase in the number of “heads” in the legal department taking on a position of director or vice-president. The second aspect that shows internal appreciation for the legal director is tied to the information concerning to whom they report: in 2013, it was seen that most of them (65%) answer directly to the company's main executive.

Why have legal directors gained more prominence in active companies in Brazil? Many interviewees identify economic growth, the increase in foreign capital entering the country, privatizations, the creation of areas such as compliance, and the gain in trust from other areas in the company as reasons propelling the increased value given to this professional.

The prominence and sophistication of the legal director's role over the last few decades has fostered significant transformations in Brazil's legal market, causing impact both on the criteria when hiring professionals working in legal departments, and on legal education and the desire to develop new abilities that were not developed in Law School. Such transformations also directly influence the activities carried out by corporate law firms, which are required to provide higher quality and swifter law services, together with the best cost-benefit ratio.

The arrival of companies from different sectors in Brazil and economic growth have required law professionals working in the corporate market to acquire new legal and business knowledge. So much so that many legal directors we interviewed, who usually have a traditional background in law, said they have tried to improve through specialization courses in the country or abroad, as a means to furthering their technical-legal knowledge and acquiring an education in business, accounting, and international law.

These qualifications are desired due to the greater responsibility given to legal directors and diversification of legal departments, which have taken on more duties internally, especially demands related to the everyday running of the business (core business), such as contracts, consulting, operations, corporate, and administration. In general, legal departments outsource mass demands to law firms, involving labor and consumer litigation, tax litigation, very specific and at the same time complex issues, which require a lot of time from the team, such as mergers and acquisitions (M&A), and specific and specialized matters (criminal and intellectual property).

Opting to expand the legal department or decrease its size has undergone changes over the last few decades: firstly the legal department used to comprise two or three lawyers, with outsourcing prevailing for almost all legal services: then in an attempt to reduce costs by contracting external law firms, legal directors chose to bring into the company the handling and performing of several legal services. Today, the data and view offered by those interviewed indicate a pattern according to which mass litigation and more sophisticated legal matters are treated preferably by law firms, whereas everyday legal services – such as contracts – and those closer to the company are handled internally. In larger companies, especially those with international operations, the work legal executives have been doing towards fostering good corporate governance stands out.

When legal directors choose to contract law firms to handle some service, what are the criteria used in this selection process? The main criteria are related to the firm's reputation (ethics and market recognition), fees, and, as revealed by some interviewees, the lawyer's profile and excellence, regardless of the firm he or she works for.

Finally, it is worth highlighting that although most legal directors recognize the heightened value companies are giving to their roles, some claim that their job as a key element in the strategic decision-making process deserves to be strengthened. Others say that the board of the company should take into consideration recommendations of law professionals to their body, culminating in even greater value to the legal department. Therefore, heightening

the value of this profession is still a work in progress. It is undergoing a developmental process and seems to be pointing towards other upcoming changes.

Comparing the Brazilian scenario with the US, using Nelson and Nielsen's (2000) three ideal standards identified in those responsible for the legal department, we can say that it is possible to find three in-house lawyer profiles in the country, emphasizing the significant transition from the role of "cop", perceived as a necessary evil involved in managing the business' legal risks, to the role of "counselor", balancing legal risk management, compliance and business recommendation. The "entrepreneur", in turn, is still reserved for a restricted minority, but is desired by many.

Considering this, this work is innovative within Social Sciences in the national scope for identifying the heightened value being given to the career and the trends related to it, aiming at, above all, boosting reflection on the rising legal director career within Brazil's legal market, based on profile data, and their views and career experiences. And stoking the fire for future research that takes and expands on these initial considerations. In conclusion, we have pointed out some of the main issues that deserve reflection, given these initial results: (i) are the OAB (the Brazilian Bar Association) rules adequate to discipline the work performed by the lawyer in the position of legal director or the required changes?; (ii) what are the main ethical dilemmas faced by in-house counsel and how are they solved on a day-to-day basis?; (iii) what happens to legal directors when there is a change in shareholder structure in the company, or the main executive is replaced?; and (iv) how does in-house counsel assess the concrete experience of employing arbitration in matters involving the company? These questions, stemming from the discoveries made by this first study, point to the need to set up an extensive research agenda that is in synch with the development of new work standards for law professionals.

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