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Beyond the Billable Hour: A Former General Counsel's Perspective on Retaining Outside

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In the first two articles in this series, I reflected on lessons learned from my years as an in-house lawyer with multinational companies—including Shell, Hershey Foods, Dole Food Company and Nissan North America—and how those experiences continue to shape my approach to practicing law and selecting outside counsel. There is a third question that naturally follows:

Once you have found outside counsel you trust, what is the best way to structure that relationship?

For many companies, the traditional answer remains the billable hour. A legal issue arises, outside counsel is contacted, a matter is opened, the work is performed, and an invoice follows. That model certainly has its place. But after having sat in the general counsel's chair, I believe that for many recurring corporate needs—particularly those involving overseas operations—an annual retainer can provide something much more valuable than discounted legal fees.

A retainer should not be viewed primarily as a pricing mechanism. It should be viewed as a relationship and risk-management mechanism.

That distinction is important. The real value of a well-designed retainer is not simply that the company knows what its legal bill will be each month. It is that management gains ready access to lawyers who know the company, understand its business, recognize its risk tolerance and can provide practical guidance before small issues become large ones.

The Most Valuable Call May Be the One Made Early

Anyone who has served as a general counsel knows the familiar "quick question."

"Can we terminate this employee?"
"Can we sign this?"
"Can we make this payment?"
"Headquarters wants to implement this policy in China. Is there a problem?"
"The local regulator contacted us. Should we be concerned?"
"Can you take a quick look at this clause?"

None sounds like a major legal engagement. And most are not. Yet these relatively routine questions are often precisely where good preventive lawyering creates the greatest value. A ten-minute conversation today can sometimes prevent a six-month dispute tomorrow.

The difficulty with the traditional hourly model is that it can unintentionally discourage those conversations. If management believes every telephone call starts a billing clock, people inevitably begin asking themselves:

"Is this really important enough to call the lawyer?"

From a risk-management perspective, that is often the wrong question. I would rather have a business executive ask counsel one question too many than fail to ask the one question that later costs the company hundreds of thousands of dollars.

The Retainer Changes the Relationship

This is where I believe the greatest advantage of a retainer lies. A good retainer changes the relationship between client and counsel from **reactive to preventive**. Instead of calling the lawyer only after a problem has matured into a formal legal matter, management develops the habit of seeking guidance earlier. Outside counsel, in turn, becomes more familiar with the company. The lawyer learns the business, the management team, the company's products, its customers, its internal approval processes and its tolerance for risk. Over time, counsel also learns something that cannot easily be captured in an engagement letter:

how the client thinks.

That institutional knowledge makes legal advice faster, more relevant and ultimately more economical. The lawyer is no longer starting from zero every time the telephone rings.

That is why I view a retainer fundamentally as a **relationship investment** rather than merely a fee arrangement.

Limited Versus Unlimited: Which Makes More Sense?

There are generally two practical approaches. A **limited retainer** provides a specified number of hours or defined categories of routine services for an agreed monthly or annual fee. Work exceeding those limits is billed separately. The advantage is obvious: both client and counsel know the boundaries. For companies with relatively predictable legal needs, this model can work very well. The disadvantage is that everyone may begin keeping score.

"How many hours have we used?"
"Should I save this question until next month?"
"Does this call fall within the retainer?"

Once those questions begin influencing whether management contacts counsel, some of the preventive value of the relationship is lost. The alternative is what I would call an **unlimited quick-question retainer**. For a fixed annual fee, designated company personnel have ongoing access to counsel for routine consultations, preliminary assessments and limited reviews.

When a matter becomes substantial—a transaction, litigation, investigation, extensive contract negotiation or specialized regulatory issue—it moves outside the retainer and is separately scoped. For the right company and the right law firm, I generally favor this approach. It encourages communication. But "unlimited" must not mean unlimited legal work. The purpose is to provide unlimited **access to routine guidance**, not to place an entire acquisition, lawsuit or investigation inside a general advisory fee. The boundaries should be clearly understood from the beginning.

Most Questions Do Not Require a Specialist

This is particularly important in managing cross-border legal work. From my experience, the great majority of questions generated by an overseas subsidiary do not initially require a highly specialized lawyer. They require an experienced business lawyer capable of identifying the issue, giving practical preliminary guidance and recognizing when specialist assistance is necessary.

In practical terms, I have found that perhaps **90 percent of the everyday questions arising from an overseas operation can often be addressed at the general guidance level**. The question may involve employment, contracts, intellectual property, corporate governance, regulatory compliance, data, customs, payments or government interaction. Frequently, management simply needs to know:

> **"Are we generally okay?"**
> **"Is there a problem here?"**
> **"How should we handle this?"**

Or:

> **"This looks more serious than a routine matter—who should we bring in?"**

That last answer is particularly important. A good cross-border counsel should never attempt to be everything to everyone. If the issue requires a specialist in tax, antitrust, securities, environmental regulation or complex litigation, the general counsel is probably going to engage that specialist regardless. The retainer lawyer's job is to recognize that need early and help the client get to the right resource. In that sense, retained cross-border counsel can function as a **legal first responder and navigator** for the overseas business.

Keeping Commerce Flowing

I believe this is one of the most underappreciated functions of business counsel. Lawyers should protect the enterprise, but we should also understand that the enterprise exists to conduct business. Legal advice should therefore help **keep commerce flowing**. A business manager facing a routine issue generally does not need a memorandum discussing every theoretical possibility. The manager needs sufficient guidance to make a responsible decision and move forward. Sometimes the answer is:

> *"Yes, proceed."*

Sometimes:

> *"Proceed, but make these two changes."*

Sometimes:

> *"Stop. We need to look at this more carefully."*

And occasionally:

> *"This is outside the ordinary course. We need specialist counsel immediately."*

Knowing which answer to give is where experience and judgment become invaluable.

Why Cross-Border Retainers Are Different

The case for a retainer becomes even stronger when the company's operations and its headquarters are on opposite sides of the world. Imagine a U.S. multinational with a WFOE in China. Local management encounters a problem at 10:00 a.m. Shanghai time. Headquarters may still be asleep. By the time headquarters responds and contacts unfamiliar outside counsel, an entire business day may have passed. Then the lawyer asks for background information.

Another day can disappear. By contrast, retained cross-border counsel who already understands the WFOE, its business and its relationship with headquarters can often respond immediately.

This is where **global experience combined with local expertise** becomes particularly valuable. The lawyer must understand both sides of the equation.

> *What does headquarters need?*
> *What does local management need?*
> *What does local law require?*
> *What will work commercially?*
> *And how do we reconcile all four?*

Cross-border counsel should also anticipate the next question rather than merely answering the first one. When twelve time zones separate the participants, sending half an answer can cost another full day.

> **Responsiveness in cross-border work is not simply a courtesy. It is an economic advantage.**

Predictability Without Sacrificing Judgment

There is, of course, a financial benefit to the retainer model. Legal departments appreciate predictable budgets. A fixed annual amount makes forecasting easier and eliminates the administrative inefficiency of reviewing numerous small invoices. But predictability should not be confused with cheapness. The objective is not to purchase the maximum number of lawyer hours at the lowest possible price. The objective is to obtain **appropriate legal judgment at the right time at a predictable cost**. Sometimes the greatest value produced under an annual retainer may be a five-minute telephone conversation. If that conversation prevents a bad termination, an unenforceable agreement or an avoidable regulatory problem, measuring its value by the number of minutes consumed misses the point entirely.

Better Counsel Through Better Knowledge

There is another advantage that develops gradually. A retained lawyer becomes better counsel because the lawyer becomes more knowledgeable about the client. That knowledge compounds.

The first year, counsel learns the company's structure and personnel. Over time, counsel understands its history, recurring issues, headquarters expectations, local management style and risk profile. Eventually, the lawyer can identify an issue before the client even recognizes it as one. That is difficult to achieve when every assignment is sent to whichever law firm happens to be available at the moment. Continuity creates institutional memory. Institutional memory creates efficiency. And efficiency creates better judgment.

What I Would Ask as a General Counsel

If I were again sitting in the general counsel's chair and considering an annual retainer with cross-border counsel, I would not begin by asking:

"How many hours am I getting?"

I would ask:

Does this firm understand our business?
Will experienced lawyers actually be accessible?
Can our overseas management contact them when necessary?
Will they respond promptly across time zones?
Can they distinguish between a routine issue and one requiring specialist intervention?
Are the boundaries between retainer work and separately billed projects clear?
Will they invest the time necessary to understand our local operation?

And most importantly:

Will having this relationship help us identify risks earlier, make decisions faster and operate the business more effectively?

If the answer is yes, then the economics usually become much easier to evaluate.

A Relationship, Not a Billing Arrangement

Looking back on my years in-house, I believe the best outside counsel relationships were never defined primarily by invoices. They were defined by trust. I knew whom to call. They knew why I was calling. They understood the company well enough that I did not have to begin every conversation with twenty minutes of background. And I trusted them to tell me not only what the law said, but what they thought we should do. That is what a well-structured annual retainer can create. It provides **access, continuity, institutional knowledge, responsiveness and predictable cost**. More importantly, it encourages management to seek advice while problems are still manageable. For multinational companies operating across borders, that can be particularly valuable. So I would return to the proposition with which I began:

A retainer should not be viewed primarily as a pricing mechanism. It is a relationship and risk-management mechanism.

The annual fee is simply how the arrangement is paid for. The real asset is a lawyer who knows your business, understands your overseas operation, answers when you call, recognizes when specialist help is needed—and provides practical guidance that allows responsible commerce to continue. From the perspective of someone who has sat on both sides of the attorney-client relationship, that is where the real value lies.

Good outside counsel solves problems. Great outside counsel helps prevent them.

About the Author

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Mr. Pang has over four decades of legal and business experience, including senior in-house roles with major multinational companies before entering private practice. Drawing on experience from both sides of the attorney-client relationship, he advises international businesses on cross-border transactions, corporate matters, regulatory issues, and navigating complex legal and business challenges in China.

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