With eyes wide open

ASIAN-MENA COUNSEL spoke to former General Counsel for an Australian University, Sascha Hindmarch, about her recent transition back into private practice with US/UK boutique law firm Hausfeld & Co LLP. Here, Sascha tells us about the factors that triggered her decision to move back to private practice, some of the perceived barriers to entry as well as the challenges she has encountered along the way.

ASIAN-MENA COUNSEL: Sascha, it might be useful for members of our In-House Community who might be considering a transition into private practice to hear about what your experience has been since you joined your current firm, Hausfeld & Co LLP earlier this year, and what advice you might have.

Sascha Hindmarch: It is still early days, yet what I have gauged already is that having worked in-house is no impediment to a return to private practice. In fact, quite the opposite can be said. There is a benefit gained from being on the ‘other side’. You become more attuned to the commercial realities and sensitivities of businesses and in-house lawyers with whom you work. Hopefully, that means you cater your work product and knowledge in a way that is more relevant to your clients. It is fair to say that the additional skills, experience, knowledge and network gained in-house should serve you, your client and the firm as well. I would say if considering a return to private practice, it pays to carefully work through why you want to go back and what you can bring to the firm based on your in-house experience.

AMC: Could you tell us about your previous in-house position at an Australian higher education institution and what sparked your decision to return to private practice in London?

SH: I was the General Counsel of a small legal team. It was a challenging role in a number of ways. Generally speaking, Universities are large, high profile and political organisations. The one I worked for was no different in that regard - it had over 2,500 employees, over 35,000 students and generated revenue in excess of AUD500 million. Like many in-house roles, the work was broad and diversified – anything from complex commercial agreements with the government and private sector through to student complaints that had the potential to turn litigious. While much of the work was local to Australia there were cross-jurisdictional elements that were largely Asian specific.

Part of my position meant there were times I occupied non-legal roles – so, like any in-house lawyer in that position knows, a heavy administrative burden is placed on you to ensure proper demarcation. Within the University’s structure my role did not form part of the senior management team but obviously, as GC, I worked closely with the members of that team. You really do get an insight into how the business approaches legal issues – not only is that interesting, it can also be surprising. But that provides opportunities to assist a business in the way it looks at, and deals with, its legal and risk profiles.

The decision to return to private practice came out of left field. I have to say when I took up a GC role I did not envisage a return to private practice. Working in-house at that level may be challenging but it can also be very rewarding. But when this current opportunity presented itself, I believed that the time was right.

First, the firm was the right fit. Hausfeld & Co LLP is a US/UK boutique litigation law firm with a global client base. It is recognised particularly in the areas of competition/antitrust, financial services, consumer and human rights as well as being an award winner for its innovative approach to costs/service. My private practice background is litigation with a professional and financial services focus. I also have some definite views – shaped by my in-house experiences – around lawyers’ client service delivery and where that can improve. When I factored all that into the equation it seemed a natural fit.

Also, I think there are some real opportunities across a range of jurisdictions to work with businesses and GCs concerning the internal legal set up and management. The truth of the matter is that there are still a number of countries where ‘in-house legal’ is a relatively new concept. Even in countries like Australia and the UK, I have noticed over the last few years a number of Small and Medium Enterprises (SMEs) looking to establish in-house legal capabilities but have been left with the impression businesses do not
always get that right the first time. I take the view that investing wisely and early to ensure the legal function is established and then working properly means a business should reap the long-term benefit. So, I think that is where the opportunity presents itself – being able to sit down with businesses and assist them to establish such a capability.

AMC: Did you have any apprehensions about working for a law firm after working in-house?
SH: Yes and no. Of course, you have certain apprehensions about returning to private practice once you have left. The key is how you handle this and to remain confident that you have the ability to get back in the saddle and provide invaluable skills and insight that will only assist the firm, and the clients, in the long run.

AMC: How have you dealt with the challenge that inevitably presents in private practice including for example, the pressure to build your client book/book of business and maximise your billable hours?
SH: Billable hours and book building are a reality of any commercial law firm. Pressure comes from that but it is important you do not let billable hours, in particular, become your focus. The driver always has to be the work and delivery of service. The hours billed each day will take care of itself to a large extent if the focus is in the right area and teams are managed properly.

As for business development, everyone is different. For me I have always considered business development one of the more interesting aspects of working in a law firm. Again, you need to hone your technical ability but you can leverage that to develop a practice. Lawyers often underestimate the value of getting to know your client, what it is they do and the type of business they work for. Building on these foundations – along with being open and available to your client – cements strong relationships, will make working together much easier and effective and can lead to return work and referrals.

AMC: Did you find it hard to market yourself for a private practice position since usually the flow of traffic goes the other way, that is, more lawyers switch from private practice to in-house?
SH: That’s a difficult question. I am in a unique position in having previously worked with Hausfeld & Co’s Managing Partner, Anthony Maton, when I worked in London in the past. So I am not sure how much self-marketing I did. Having said that, I maintained contact with Anthony, as I have with others who I consider have been strong influences in my career. For example, I would send articles I had written and generally kept in contact with him. In a way I guess I have been marketing myself over an extended period of time. But it is actually an important point – not to lose contact when in-house with those private practitioners you previously worked with and consider strong influences. They form part of a network and you just never know where that will take you or them.

AMC: What can an in-house lawyer do to increase his/her chances of receiving an offer to go into private practice?
SH: First and foremost, be yourself. It is a point often overlooked. From there, think about what skills you can bring to a law firm and how you can transpose your skill set from in-house to a law firm. Never underestimate the additional skill base you have developed as an in-house lawyer especially in the area of client service.

Whether in-house or in private practice, servicing the client/business is always at the core. Lawyers, and law firms, often lose sight of the fact that we are also in a customer service industry. With that, we need to be able to service our clients properly – we need to listen to what our clients really want and deliver a service to meet those needs. We also need to communicate the message effectively.

As an in-house lawyer you are a customer and with that you are afforded an opportunity to witness the good and bad
of how lawyers service their clients. Being in-house gives you a unique insight into a business and the expectations in-house lawyers and businesses have of external lawyers. From my experience, it is always obvious which practitioners have had in-house experience as it comes down to service delivery – good in-house lawyers get that better than any other type of lawyer.

Just let me touch upon the effective communication point for a moment. From what I have seen and experienced, in-house lawyers will use different ways to communicate a message. These are methods that can be applied within private practice. Simply ask the client how they want information presented to them. It may be that if there is a long piece of advice that cannot be avoided put an Executive Summary with it. Also, use bullet points in emails, where you can, to give an overview of the main issues being covered. It amazes me how many lawyers still do not do that. CEOs, Senior Executives, Board members, GCs are all busy – summaries help them. Benchmarking, diagrams, tables, flow charts are also different but effective tools to communicate advice but again I do not think you see private practice lawyers doing it enough even though businesses appreciate this. In-house lawyers know this and can use this skill in private practice.

Also, as an in-house lawyer you have probably given more thought to how you can add value to the business. You need to think more creatively and innovatively in this area. Do not underestimate this skill either. The little extras can provide a competitive advantage.

Let me give you an example of what I mean. In-house I ran a panel review. It gave me an insight into the way different firms approach the process, what is done well and what is done poorly. For instance, one topic that had to be covered was how the firms could provide ‘innovative’ value added services to the business. It was left open to see how creative they could be and how much effort they gave to assess, and put forward ideas to drive the business in a positive direction. I am not sure whether this surprised me or not, but with the exception of a couple of firms, they all fell short on that question. They were unable to think creatively beyond providing, in effect, free case updates and seminars. In my opinion, these are ‘standard’ value-adds, not innovative ones. From my perspective, I think that is an example of an experience I had – and which many in-house lawyers do – that gave me a skill I can now apply from the other side of the fence when I am involved in a pitch/tender.

Also, you potentially bring a law firm a closer network and contact base of GCs and in-house legal teams, an intimate knowledge of a particular client or potential client, and a deeper understanding of a certain industry sector. In a competitive commercial legal environment, these are necessary skills to have as part of your armoury.

AMC: And vice versa, what would you suggest for someone who is looking to make the move in the other direction, that is, to go in-house?

SH: As for a move the other way, there are a number of tips I would recommend before taking the plunge. I will steer clear of cliché responses such as ‘getting to know a business’, being ‘more business focussed’, and providing ‘commercially orientated advice.’

First of all, make sure you are going for the right reason. By that I mean if you think it is going to be easier than private practice, you may find yourself sadly mistaken – especially if you intend to do the job properly. Ethics, for example, will potentially challenge you unlike any experience you will ever encounter in private practice.

Investigate your potential employer before making the move because, ultimately, they will also be your client and you want to be comfortable with the way your client handles their legal issues. If the way they treat legal matters does not align with your core values, and to a lawyer’s ethics, you may wish to steer clear.

Connected with this, find out how sophisticated a potential employer/client is when it comes to legal matters. The less sophisticated, the less likely you may want to take the step. There are some simple ways you can do this to satisfy your own due diligence. When interviewing, ask questions about legal spend, what law firms they use, why and how they use them and if an in-house lawyer is not reporting to the GC – ask why. Equally, if the GC is not reporting to the CEO – ask why. Listen carefully to the answers as they will be your barometer as to whether a business has a sophisticated understanding of the way in-house legal should operate.

Also, remember that going in-house does not mean that you stop operating a legal practice. It is an issue I constantly reinforce because I have seen a number of in-house lawyers completely overlook this. If an in-house practice is operating properly then it is assisting the business and is not just a perceived ‘costs drain’ to the business. Conversely, if it is dysfunctional it provides no value.
And do not be afraid to approach in-house lawyers and former ones and ask them about these issues. I know I would certainly be happy to talk to anyone thinking about making the move either way.

**AMC:** It has been said that one of the barriers to entry when moving from an in-house role to private practice is the perceived knowledge deficit. Do you believe this to be true?

**SH:** Good question. The knowledge deficiency perception most definitely exists – let’s not shy away from that. Ironically, I think it is a perception driven by the wider profession’s own lack of knowledge of the in-house role and its demands. That is changing, albeit, slowly. But I think it is for in-house lawyers to drive even harder change in this area. In-house lawyers should not be reluctant to educate private practitioners about their own role and the role private practitioners can play in assisting them.

I think the majority of in-house lawyers these days have a high degree of technical legal ability before they make the move and continue to develop those skills whilst in-house. And along the way they develop the additional skills that I mentioned previously.

It is also important not to overlook that it is not uncommon for experienced senior partners of significant international law firms or barristers to go in-house to head up internal legal teams. The smart law firms are waking up to this and have recognised in-house lawyers are an employment source – tapping into their legal and management skills, networks and client/industry specific knowledge. The one thing I have noticed over the last five years or so is that more and more lawyers are moving back into private practice and that supports this point. I think there will have to come a time when the movement back and forth from in-house to private practice will be par for the course and the perception will more accurately reflect the reality.

**AMC:** Is it right that you are viewed now as more of a revenue generator in your law firm as opposed to a cost centre when you worked in-house? Has this changed your every day approach to the work that comes across your desk? If so, how has it changed?

**SH:** Undoubtedly my role has changed back to revenue generator. However, it would be misconceived to think that being a cost centre is necessarily easier than a revenue generator. Each present challenges because the reality of the commercial world is that value is invariably measured by how much money you either make or save.

Undertaking work that costs the client but provides no genuine value whatsoever is one thing that has always largely irritated me about private practice. This usually happens as a result of poor management and/or a failure to listen to the client.

My attitude to this has crystallised as a result of my in-house experiences. When you have to closely review a law firm’s account prior to signing off for payment you are assessing this based on whether you have received value for money, if they have listened to what you wanted and delivered this and whether it comes within the budget they have set. There have been times when I have had to call a law firm and tell them I was not prepared to pay their bill because they had failed to listen to what was needed and the organisation simply received no value for the legal service provided.

Then on the other hand when you work with a firm that clarifies what is needed, understands your business and its legal needs, sets a budget and sticks to it (or communicates any variation) you really do see the value of legal advice to a business.

That type of experience shapes your thinking when returning to private practice. Ultimately whatever the work that comes across your desk, you get on with it. But there is always a need to firstly step back and ask yourself whether you are providing a service that is wanted or needed and of value. Not to do so is clearly a disservice to the client.

**AMC:** Have you found that there are more opportunities to work collaboratively with your colleagues in a law firm environment or did you find working as part of a business team in-house was more collegiate?

**SH:** It’s probably the former rather than the latter. As an in-house lawyer you work closely with the business to achieve its objectives and help implement its strategy and direction. But, when working closely with a business you always keep some distance because of the need to remain independent – and that is something you always need to remember. In that sense, working collegiately with the business in-house is never – and never can be – the same as working exclusively with other lawyers.

**AMC:** Have your working hours changed substantially since going back to private practice?

**SH:** Not really. That again is a common misunderstanding of working in-house. I often smile to myself when I see recruitment agents advertise in-house roles with the enticement of better working hours. I am not a proponent of the theory that the longer hours you work, the better the job is done. In fact largely it has been the opposite, I have always found the good lawyers – in-house and private practice – are the ones not working extreme hours for the simple reasons that they are organised, have zeroed in on the issue, and managed/delegated the project accordingly. Yet, you have to be realistic about the hours you will end up working as a lawyer. Whether it be in-house or in private practice, if you care about what you do, value the client and the work, and are therefore doing your job properly, the role will never be a clock on/clock off ‘9 to 5.’