



Partner Remuneration:

Finding the Balance Between Origination and Execution

By Tony Williams, Principal, Jomati Consultants LLP

In recent years many firms have found it necessary to revise their partner remuneration system to ensure that they can attract and retain the partners capable of generating business, maintaining strong client relationships and do consistently high quality work.

In reality in most law firms the 80:20 rule applies in that 80% of the client relationships are originated by 20% of the partners. In firms with long term institutional relationships, generating new clients may be less important but maintaining, strengthening and deepening the existing relationships is essential. In smaller firms the impact of one or two major rainmakers leaving a firm can be substantial and even threaten the survival of the firm. For this reason, such partners are often able to demand and get high rewards for fear of the consequences of their departure.

Given the relatively small number of partners with strong client relationship skills, the current challenge to keep them

is more acute than ever due to:

- The impact of competition especially from the major US firms. These firms are highly profitable and very forensic in their approach to lateral hiring. They are prepared to be patient to get the right candidate and are prepared to offer high earnings possibly for a guaranteed period.
- Increasingly we look at remuneration not over the full working life of a partner but over the next three to five years. This shortening of the period means that a remuneration system that promises “jam tomorrow” is no longer enough to retain top talent.
- Moving laterally as a partner at least once or twice in one’s career is now considered acceptable. There is no stigma attached to such a move, so a partner is relatively free to move if offered a more lucrative opportunity. In Hong Kong the use of restrictive covenants and notice periods may disrupt a partner’s ability to move their

clients to the new firm, but this is rarely a long term impediment.

- The boom in private equity since the financial crisis and in M&A activity over the last year has increased the demand for lawyers with strong market credibility in these areas, though we have seen lateral movement of partners across all practice areas.
- The rise of the “me too” movement has forced firms to think about the behaviours that are acceptable in their firms. In most firms inappropriate sexual behaviour is not the key issue but bullying, hogging work and generally uncollegiate behaviour often is. For partners claiming significant client relationships and high billings, such dysfunctional behaviour was accepted in the past. Now there is greater questioning of this behaviour and larger firms are increasingly prepared to exit such partners if their behaviour falls outside an acceptable range.

These pressures have been challenging

for many law firms. Lockstep based firms (where partner remuneration increases each year by pre-determined steps before reaching plateau) have been particularly challenged as the lockstep may not reward rising stars quickly enough and the top of lockstep may be insufficient to retain the top talent. As a result many lockstep firms have been forced to make multiple changes to their lockstep model including gateways which partners have to qualify to pass through before progressing up the lockstep, the ability to hold a partner at a lockstep level or the ability to move a partner down some tiers, the ability to accelerate a partner's progress up the lockstep and the use of a super lockstep which is only available to the highest performers. Given that some US firms have been prepared to pay up to US\$10 million for top performers it is questionable whether these changes will be sufficient to retain the best talent in hot areas of practice.

In any remuneration system there is a tension as to how to measure and reward the partners who originated the client relationship and those who did the work for the client. In many firms the person who originated the client will also do the client's work but in relation to larger and more complex clients, a range of partners will be involved in doing work for a client. In firms with deep and long established clients, the partners managing the relationship will, in effect, be treated as the originators even though they did not actually bring the client in. The question of who becomes the client partner in such circumstances can be sensitive. It can also raise issues of diversity and equality if those given such roles are not fairly selected.

Origination of itself is not straightforward. A partner may have been part of a team that pitched to the client so treating one partner as the originator may be too simplistic. A client may have had a number of touch points within a firm before instructing it on a matter, which of those touch points contributed to the decision to instruct the firm? A client may have instructed the firm many years ago and the original originating partner has retired or left the firm. In that case is

origination credit appropriate or should a credit be given to the partners who manage and grow the relationship? The originating partner may introduce another partner who the client uses multiple times and the client treats as its main contact at the firm, should that partner get some of the origination credit? Should origination credit apply for a finite period and then be reviewed and only payable if the originator is actively managing the client? Should there be a presumption that at least two partners should be responsible for every major client relationship to ensure a range of contacts with the client and to address potential succession issues?

Agreeing any changes to the pre-existing origination principles can be difficult especially where in the past partners have been given origination credit for life irrespective of their subsequent role with the client. However not recognising the role that various partners may have in a client relationship risks producing a sub-optimal relationship in terms of fee income generated. The relationship may also be very fragile if based on only one partner's contacts. Institutionalising client relationships may be resisted by some partners who see "their" clients as a valuable asset in the partner lateral transfer market.

Once the principles that apply to recognising origination credit have been decided, it is necessary to determine the balance of reward between those originating the client and those doing the client work.

Even here identifying the contribution of the partner doing the work can be complex. The partner may be just doing work referred from the originating partner or may be organising the client relationship relating to that matter and managing the team (including other partners) delivering the service to the client. This partner may be responsible for agreeing financial terms with the client and billing the client.

Some firms have adopted relatively simple and transparent approaches to the balance between the origination of

work and the doing of it. Perhaps the originator gets credit for X% of the fees generated and the partner doing the work credit for Y% of the fees generated. Even these approaches are increasingly under pressure. Different types of work or work for different clients may produce significantly different profit margins. Some work may rely on relatively little partner input while other work may require the involvement of multiple partners.

It is the relative complexity and variety of working arrangements that has led many firms to move away from rigid formulaic means of calculating remuneration to a more nuanced approach which seeks to take into account and value the myriad of different roles that contribute to a successful client engagement.

Any remuneration system of necessity has to walk a tightrope. Each year there is a finite amount of profits to distribute. If one partner is overpaid, by definition, another partner must be underpaid. Generally origination is strongly rewarded if only because relatively few lawyers have good client origination skills. However, in reality, most top performers are both originators and doing the work. Indeed, their success at doing the work is part of how they originate new work. As a result the line between origination and execution is much more blurred. In such a complex environment any remuneration committee has to try to weigh up all the relevant factors and hope that their determinations are sufficient to engage and retain the strongest performers for at least another year. Inevitably larger firms can afford for a limited number of high performing partners to leave each year if this protects the culture and cohesiveness of the firm overall. Smaller firms rarely have this luxury given the potentially catastrophic impact of some key partner departures.

It has always been difficult to identify, measure and reward the range of contributions expected to be made by a law firm partner. With competition for top talent increasing and partners adopting a shorter time horizon it is so much more challenging to balance the competing criteria. ■