



THE RISE OF THE GC: FROM LEGAL ADVISER TO STRATEGIC ADVISER

A 2016 NYSE GOVERNANCE SERVICES/BARKERGILMORE SURVEY REPORT



As the scope of both enterprise risk oversight and corporate governance continues to expand and evolve, so does the role of the corporate general counsel. There is little argument that today's GC has a much wider purview beyond the customary responsibility of serving as the organization's chief legal officer and, quite often, its corporate secretary. As these roles shift, many organizations are finding that the perspective of the general counsel—who has been trained to analyze issues legally, ethically, and objectively, is uniquely positioned to bring additional insights to strategic decisions.

In early 2016, NYSE Governance Services and BarkerGilmore conducted a study of US corporate directors and executive officers to identify trends related to the general counsel's role and responsibilities and determine how legal departments can better prepare for the future needs of the corporation.

KEY TAKEAWAYS

- Ninety-seven percent of respondents expect the GC to be part of the executive management team by the year 2020, an increase of 16 percentage points from 10 years ago.
- The role of the GC continues to evolve, with 14% currently acting as chief risk officer, a number that is expected to more than double to 31% by 2020.
- When asked which competencies directors and officers anticipate would be the most valuable for the GC to have in 2020, the top two traits were sound judgment (72%) and high integrity (69%), ahead of legal expertise (63%).
- A compelling majority (79%) of directors and officers surveyed agree that by 2020, one of the general counsel's most valuable functions will be to advise the board and the CEO.
- Only 40% of directors and officers said ROI is of importance in evaluating the GC.

THE BROADENING SCOPE OF THE GC'S ROLE

While the scope of GCs' responsibilities varies depending on company size and industry, our research shows that increasingly, many are becoming influential components of the senior management team. Indeed, a compelling majority (more than 70%) of directors and officers agree that by 2020, in-house counsel's most valuable functions will likely shift from serving as an ethical sounding board and ensuring the board adheres to best governance practices (which ranked first and second in 2015) to acting as adviser to the board and the CEO (Figure 1).

This evolution from legal adviser to strategic adviser is significant because it wasn't very long ago that the GC's role was more narrowly defined. In fact, a review of practices throughout the second half of the 20th century shows that most general counsel didn't report to the CEO like other members of the executive team, but rather to the CFO (in most cases)—a reporting structure that further fueled

the perception that the role of the GC wasn't on par with the rest of the C-suite, much less that of an adviser to the board.

Since that time however, a rapidly escalating regulatory landscape and a growing wave of complex mergers and acquisitions have paved the way for general counsel to assume their recognized place among the leadership team.

Moreover, in recent years, we have observed a change in the perception of in-house counsel as contributors to the organization's success. In fact, 93% of our respondents now consider the GC to be part of the executive management team (compared with 81% a decade ago), and this number is expected to climb to 96.5% by the year 2020 (Figure 2).

In addition to traditional areas of responsibility, such as compliance and transactions, our study shows that the role of general counsel will continue to evolve

to encompass strategic issues, such as corporate governance, where 85% of directors and officers believe GCs will add value in 2020. In addition, 49% believe GCs will add value to enterprise risk oversight and crisis management as well (Figure 3).

“Businesses are ever more global; regulatory schemes are ever more complex and often divergent; and the pillars of business units within a company are becoming more intertwined,” explains Eric J. Dale, chief legal officer at Nielsen. “The most effective general counsel understand this context and bring to the role not only an intimate understanding of the business, the industry, and the global economy, among many other important factors, but they develop talented, motivated legal teams that operate in sync with the day-to-day business.”

In *The Inside Counsel Revolution: Resolving the Partner-Guardian Tension*, former GE general counsel, Ben W. Heineman Jr, notes, “The greatest

challenge for general counsel and other inside lawyers is to reconcile the dual—and at times contradictory—roles of being both a partner to the business leaders and a guardian of the corporation’s integrity and reputation.”

ADDITIONAL HATS

All this change means GCs are adding much wider responsibilities to their workload and broadening their oversight throughout the organization. Currently, 78% of general counsel act as the corporate secretary; 55% are also the chief compliance officer. Sixteen percent hold the title of chief government relations officer; 14% are the company’s chief risk officer. Interestingly, the directors and officers we surveyed expect these additional titles to shift within four years, with fewer GCs acting as corporate secretaries and chief compliance officers (55% and 51%, respectively) and more GCs carrying the titles of chief risk officer and chief government relations officer (31% and 25%, respectively).

FIGURE 1
FUNCTIONS WHERE GCs ARE EXPECTED TO ADD THE MOST VALUE TO THE BOARD IN 2020



FIGURE 2
MEMBERS OF THE EXECUTIVE MANAGEMENT TEAM

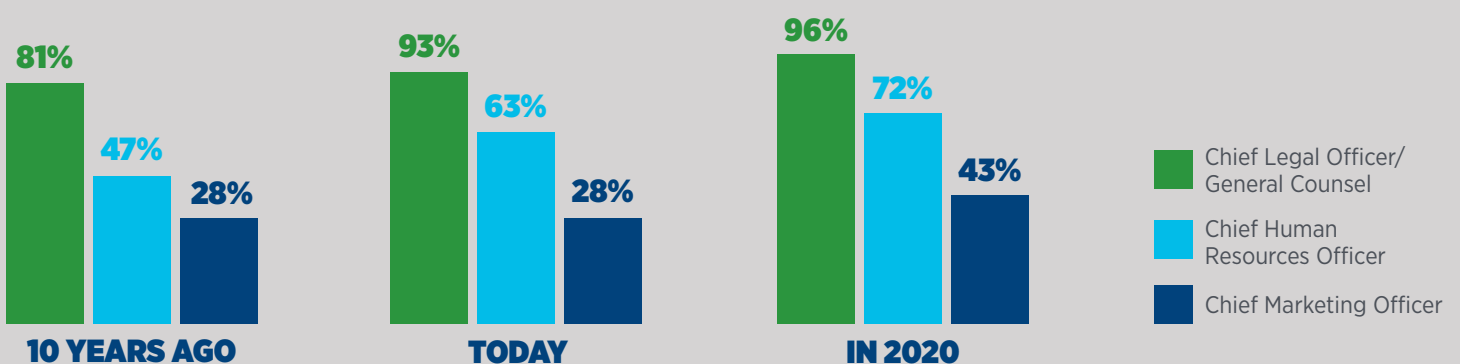


FIGURE 3

ISSUES ON WHICH THE GCs ARE EXPECTED TO ADD THE MOST VALUE TO THE BOARD IN 2020

85% Corporate governance	48% M&A	17% Cybersecurity/IT risk
80% Compliance/ethics	44% Shareholder communications	9% Data retention
49% Enterprise risk management	19% Industry issues	9% Compensation issues
49% Crisis management	18% Global issues	

Today, about 11% of GCs are also chief administrative officers; slightly more GCs holding that title are expected in 2020. Finally, whereas today around 10% of general counsel act as chief human relations officers, less than 2% believe that will be the case at the turn of the decade (Figure 4).

There are tremendous benefits that stem from relying on an internal legal team that understands the collective history of the company and its goals and strategic objectives. Prominent attorney Carl D. Liggio wrote in *Arizona Law Review* that unless you are part of the organization and see it on a day-to-day basis, it is difficult to provide the quality services businesses need. "Utilizing in-house lawyers allows corporations to have an employee who is comfortable in the worlds of business management and law, [who] can translate and mediate between the concepts of business risk and the vocabulary of the law."

Marla Persky, former senior vice president, general counsel, and corporate secretary of Boehringer Ingelheim USA, agrees. As she clarified in *The Generalist Counsel: How Leading General Counsel are Shaping Tomorrow's Companies*, "A general counsel needs to be a business person first and a lawyer second—not a lawyer that understands the business, but a business person that happens to be a lawyer."

FUTURE COMPETENCIES

The evolving role of the GC means traits and competencies for those moving into this position will need to change. When asked which competencies directors and officers anticipate would be the most valuable for the GC to have in 2020, the top three traits were sound judgment (72%) and high integrity (69%), ahead of legal expertise (63%) (Figure 5).

Dale is not surprised. "As the role and responsibilities of a general counsel continue to expand into broader areas of risk, strategy, and compliance, as companies become more global and complex, as global regulatory schemes continue to change and are often inconsistent, and as technology innovation outpaces legal precedent," he notes, "the demand for a general counsel with excellent judgment and high integrity will increase, while excellent legal skills will always be valued but thought of as something that can be purchased as-needed."

Senior vice president and general counsel of Axalta Coating Systems, Michael Finn, concurs: "Sound judgment and integrity are the two bedrock qualities of a general counsel—there are many inside and outside lawyers that can explain a contract clause or the law of a particular country or state—it is the general counsel's job to help the CEO, the board, and other leaders as they grapple with the many challenges of running the business. The true expertise the general counsel brings is thoughtful analysis and unimpeachable ethics."

To complete the profile, Heineman writes in his book that today's GCs should also personify four vital "virtues": independence, courage, tact, and credibility. The independence to express judgments in the corporation's best interest, the courage to speak out and stand in front of the tank, the tact to contribute their views in a firm yet constructive manner, and the credibility necessary for peers to appreciate the GC's input, even in disagreement, are all vital to the role.

MEASURING THE GC'S WORTH

While key performance indicators, such as loss prevention, control of litigation cost, net revenue, output, and productivity, are used by about a third of companies surveyed, the value of the general counsel, particularly pertaining to the advisory nature of the job, extends far beyond financial metrics to include the totality of intellectual contributions made to the leadership of the company. In fact, when asked if ROI is important in evaluating the GC, 48% of directors and officers we surveyed said it had either "somewhat" or "no" importance. While nearly half do not measure the GC's performance quantitatively, one director noted that his company bases its assessment on the overall performance of the company, reinforcing the idea that some companies consider the general counsel a key contributor to the bottom line.

CONCLUSION

Even after decades of transformation, it appears the role of general counsel hasn't yet reached the pinnacle of its evolutionary ascent within the organization. In-house counsel's functions have evolved from reactive to proactive, and boards are reaping the fruits of this transition with more robust strategic discussions. As Heineman writes, the role of the GC "involves not just dealing with past problems, but charting future courses; not just playing defense, but playing offense; not just providing legal advice, broadly defined, but being part of the business team and offering business advice."

In an increasingly litigious corporate environment, it is no longer acceptable to have GCs wait on the sidelines in the event an incident occurs; rather, it is now critical to utilize their full business and legal acumen to propel the organization forward, make risk-aware decisions, and help management build strategies for success.

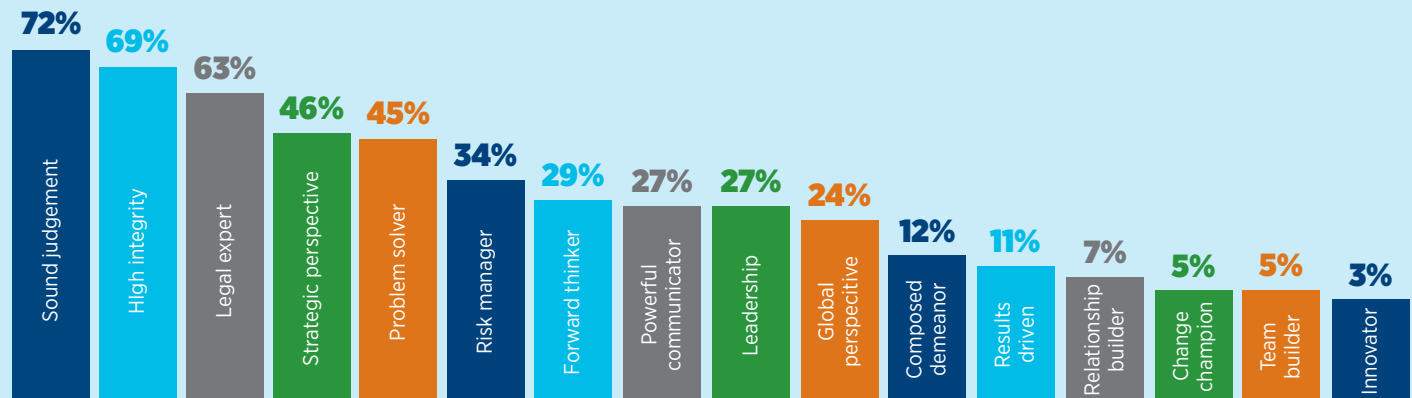
FIGURE 4
GC'S ROLE TODAY...

78%	Corporate Secretary
55%	Chief Compliance Officer
16%	Chief Government Relations Officer
14%	Chief Risk Officer
11%	Chief Administrative Officer
10%	Chief Human Resources Officer

...AND IN 2020

55%	Corporate Secretary
51%	Chief Compliance Officer
31%	Chief Risk Officer
25%	Chief Government Relations Officer
14%	Chief Administrative Officer
2%	Chief Human Resources Officer

FIGURE 5
GC COMPETENCIES MOST VALUABLE TO THE COMPANY IN 2020



Q&A

with Robert Barker and John Gilmore, managing partners of BarkerGilmore.



You both have followed trends in general counsel and legal department development for a number of years. What one piece of data really stood out to you from this year's survey?

The projected increase of GCs who will also become chief risk officer was unexpected, but it's understandable considering one of their fundamental roles is to protect the company.

While this one piece of data was surprising, the responses of the board members fortified what we are seeing every day. The board ultimately wants a leader with good judgment, someone who will guide on governance issues and be a trusted member of the executive team. The importance of the role that the GC is playing becomes more

evident every year, as we watch the executive team and the board become more involved with the interview process and more care is taken with the GC candidates who are being considered.

Are most GCs today already well suited to discuss and understand business strategy as opposed to purely legal knowledge?

Absolutely. It's apparent that more general business acumen is important to the role of the general counsel as an adviser to the board and the CEO.

With virtually every GC being considered a member of the executive team today, their influence on the business is significant. GCs must be business minded or they will be quickly replaced with someone who is.

What can legal departments do today to help ramp up needed skills and competencies for the future?

A world-class law department has depth beyond the general counsel. Today's leading general counsel are mindful of succession planning, which is completely irrelevant to any expectation of their departure date. Successful succession planning revolves around hiring exceptional talent who have the ability to work outside of their practice area and putting these individuals in situations to learn new areas of law, compliance, or business.

By constantly challenging the lawyers in the legal department and bolstering their relationships with the executive team and the business, the company will be strengthened with leaders who can step up to new legal and governance challenges. Additionally, the board and the CEO will have peace of mind knowing that the quality of the law department will support the company's business goals.

What kind of questions should boards be asking to ensure they are hiring the right GC?

Since the relationship between the GC, the CEO, and the board is so intertwined, we are experiencing an increase of boards who are involved in the interview process. A few questions that the board should ask to assess the cultural fit with a potential new GC include:

- What is your view on the role of the board and the relationship between the GC, the CEO, and the board?
- What topics should the board make a priority?
- What issues should the audit committee focus on?
- After reading our proxy, is there anything on the governance process that you would do differently?
- Describe a few situations when you helped your company achieve its business goals.
- Describe a situation where you were forward thinking and identified a potential risk.

By the board becoming involved and showing a vested interest in the hiring process, it sends a clear signal to the candidate about the type of board they will be working with. A good GC is looking for an involved and strong board, one that will effectively challenge management and ask the tough questions.

Any final thoughts on the future of the role of the corporate GC based upon these findings?

The relationship between the GC and the board is extremely important. While the GC typically reports to the CEO, the GC is the company's lawyer. When push comes to shove, the GC is responsible to the company, and not to the CEO. Boards are looking for transparency and judgment from the GC.

The GC is responsible for maintaining a steady flow of information to the board. Since the GC can act as a gatekeeper for information, the board must trust that the GC is completely transparent. The board needs someone to guide them on the issue of the day. This might mean new regulatory and privacy issues, a major acquisition or joint venture, or an internal compliance or code-of-conduct matter. Whatever the challenge, the GC must be front and center.



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