

The evolving role of the GC

A non-disclosure document lands on your desk. Do you ask for a deadline and prioritise it accordingly? Or do you ask about the deal, the investment idea, the context? If the answer is the latter, the chances are you belong to the new breed of general counsel (GC): the evolved in-house lawyer who recognises it is no longer enough to have the technical legal skills – it is now necessary to be ‘in the lifeblood of the company’ as well.

The GC role is more commercial than ever. Directors are increasingly aware of their individual and collective risk and are seeking business advice from their trusted legal adviser. Increased regulation, particularly in the financial services sector, and high-profile governance and compliance failures, such as the Libor scandal, have sharpened the minds of those sitting in the boardrooms of the world’s biggest companies.

For the best GCs, this means their value to the business is being recognised to the point where a position on the board is a logical and desirable step. A KPMG global survey of 320 in-house counsel across 32 countries last year revealed that more than a third (38 per cent) sat on the board of their company. GCs are no longer working away in silo, focusing purely on detail, logic and fact. With compliance pulling close to revenue at the top of the boardroom agenda, the in-house counsel must act as the personification of best practice for their organisations.

Putting expertise in context

Neville Howe is general counsel for the insurance giant RSA Group in the UK and part of its Western Europe executive team. He sees having an understanding of the business strategy as central to success. ‘You need to live that strategy and be in the bloodstream of the business as a GC. Once you have that closeness, you can shape and drive the internal and external agenda.’

Understanding strategy lends valuable context to technical expertise. As Howe explains, ‘you can be well connected, understand the big risks and have great technical expertise, but what do you do with that? What you need to know is the business opportunity, the strategy – where the company is going in terms of its product, jurisdictions or the way it operates. The GC role now needs people who are technically strong and get involved in the detail, but who are able to come out of that and think strategically.’

Dominic Bacon, former general counsel of Gulf International Bank, now runs a compliance advisory consultancy. He believes that the evolution of the in-house counsel role has created a clear distinction between ‘inquisitive’ GCs and more traditional heads of legal. Historically, ‘lawyers have tended to be somebody focused on the documentation, on specific legal risk, who stay in their box,’ he explains. ‘The new GC may or may not get their hands dirty with day-to-day legal work, but they are focusing on the legal infrastructure for the entire company – much like the head of IT.’

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Patricia Hoet-Limbourg, a partner at Venezuelan firm Hoet, Pelaez, Castillo & Duque and Co-Chair of the [IBA IP and Entertainment Law Committee](#), says the GC role now includes 'serious restructuring of the company's legal departments' to 'closer relations with the Chief Financial Officer (CFO) and outside counsel to keep expenses within restricted budgets and obtain cost-effective services'.

'The role of the GC requires great leadership skills. A GC has to oversee the company's legal issues, be responsible for managing the internal department and the external counsel, all with a global perspective and keeping a close control on the budget to maintain profitability,' she says.

The role has certainly changed since the financial crisis, predominately due to an increase in regulation. Liam Kennedy, a litigation and dispute resolution partner at Dublin firm A&L Goodbody and Co-Chair of the [IBA Litigation Committee](#), says 'there is now far greater awareness of the importance of corporate governance and regulatory compliance. The GC has a key role in relation to such issues, and in managing risk and safeguarding the reputation and the commercial interests of the organisation.'

Relationship with external counsel

The increasingly commercial and strategic focus of the GC has also affected its relationship with external counsel. The financial pressure, says Kennedy, of managing an unpredictable workload with limited resources and 'budgetary constraints' means GCs have to justify the use of external counsel to their CEO. Hoet-Limbourg believes GCs are facing different demands, and high quality services are now not the only requirement being considered. She says: 'Although [quality] still has a special consideration, costs are an important part of the evaluation. GCs want quality services and added value for the legal fees paid in order to receive more cost-effective services.'

Gustavo Alcocer is a partner in M&A and business law at Mexican firm Olivares & Cia and Co-Chair of the IBA IP and Entertainment Law Committee. He says: 'GCs have learned how to distinguish between commodity work and complex legal advice and how each one should be billed and differentiated. For firms that do not understand this difference and continue to believe that they can charge big fees for commodity work, a lesson will soon be learned.'

Mike Hales is a partner at Minter Ellison in Perth, Australia and Co-Chair of the [IBA Litigation Committee](#). He observes that corporates now regard their in-house legal function as their 'primary legal resource', which should be capable of carrying out most of the company's legal needs. Consequently, as Kennedy notes, there has been a change in the type of work is carried out externally.

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Despite this trend, there remain occasions where external counsel are instructed by GCs. According to Alcocer this tends to be for specialised work – transactional, litigation and compliance, as well as white collar and regulatory. For Hales, 'scale is also an issue. External law firms have an ability to mobilise resources that internal teams cannot match, particularly in cross-border transactions and disputes.'

Reputational risk seems to be the area where GCs are most keen to seek external advice. 'It's the key determinant, I think,' says Hales. 'Anything that could have a significant reputational effect on the company is likely to be referred out.'

Kennedy agrees that its issues that 'could have major reputational or regulatory consequences for the organisation, as well as any issues with significant financial implications' that will be outsourced.

Commercial advice

According to Bacon, 'there are a set of lawyers who have moved away from the law and are more willing to give off-the-cuff legal and commercial advice.' Law firm RPC's recent survey, 'General Counsel Excellence Survey', undertaken with the Global Legal Post, found that 90 per cent of respondents were giving broader commercial advice than they were five years ago. It also revealed that 68 per cent were more involved in formulating commercial strategy and half of respondents saw themselves as 'a stakeholder in business decisions'.

Charlotte Taggart joined RPC last year after leaving her general counsel position with insurance firm Lockton International, where she was also on the board.

'If you don't spend time to put yourself into the business and understand what the strategic drivers are, you will be making decisions in isolation,' she says. 'All too often lawyers have a document come across their desk and do not ask "what is this about – I want to know more".'

The best GCs, says Taggart, are prepared to take risks – an unnatural position for lawyers. 'Boards want their GCs to think as a business. Identify a risk, but make a decision, show strength. That's where real commerciality comes into play.'

Taggart says many GCs now see themselves as stakeholders in business decisions and so must be able to demonstrate relevant knowledge. That can mean getting involved in areas outside their immediate responsibility to understand other functions of the company.

The importance of the general counsel is also reflected in the regulators being much more interested in the role. Taggart says that because the position is fundamental to protecting corporate reputation and managing risk, regulators look to the GC as a ‘barometer of what is right and wrong in that organisation’.

Aspiring board members

With such recognition and increasing commerciality of the GC role, there has been a noticeable trend towards in-house counsel joining the board.

Taggart says many GCs aspire to that level – and that she pushed for her seat on the board at Lockton from an early stage – but that success in the pursuit of a board role depends on the organisation.

Some GCs, she says, deliberately choose not to go on the board because there is a perceived conflict between the advice given ‘with the GC hat on’, and the decision-making process undertaken as a board member. However, Taggart claims this needn’t be an issue where the board role is on a management board and not a shareholder or oversight board.

Taggart says: ‘I had to gain the trust of the board as their respected counsel first; I got them to listen to me. If you are appointed as a new GC with an automatic board position, that is an enormous challenge to get respect and be heard round the table. It is a chicken and egg situation. You are not able to influence until you’ve done some deals, been in difficult spots and proven your worth.’

Dominic Bacon is not so sure about GCs on the board. He says: ‘A good GC will already have the ear of the CEO and will be viewed by non-executive directors as an important adviser.’

Developing soft skills

Howe describes the position of general counsel on the board as ‘GC plus’ and highlights the ability to influence as the key ‘soft skill’ needed to thrive in that role. He says a lot of big companies are reshaping the dynamics of their boardrooms in response to the evolving world of risk.

‘In the past, what has held lawyers back is only being able to talk with a narrow view of the legal or regulatory issues. That is why some CEOs will remain unconvinced. Yet, if some bold predictions are to be believed, there will be a head of legal on the board of every FTSE 100 company in the next five to ten years. The CEO position – not a natural fit for traditionally risk-averse lawyers – could become more attainable, as well as the Chief Operating Officer seat for the modern breed of commercially, strategically and legally-savvy GCs.’

Caroline Evans, founding director of corporate governance advisory consultancy MindLeap, says that lawyers are one of several groups now more likely to be considered for executive roles in order to improve board dynamics and decision-making. This view reflects the findings of research conducted in the US, which has shown that having a GC on the board reduces litigation costs because it leads to better decision-making on the whole, not just through avoiding risk.

Evans accepts that there are ‘soft skills’ required to make an impact at board level, which not everyone possesses. She says: ‘Lawyers must understand what is required to be on the board. Now that GCs have more commercial acumen – providing more than just the legal nuts and bolts – it is true that they are less esoteric.

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Dealing with ambiguity, developing opinion rather than debating it and taking a collegiate rather than combative approach are all attributes that Evans highlights as important in the boardroom – and ones that don’t naturally fit with the typical lawyer.

She adds: ‘Some GCs will be brilliant, the boardroom will be their natural home. Others think it is what they should be aspiring to, but it is not right for them and they can influence the business in other ways.’

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Charlotte Taggart, partner at RPC and former general counsel and board member at Lockton International

Founder of business consultancy Cutting Through The Grey, Anna Bateson, enables professionals to develop their non-technical capability – including improving their ‘soft skills’. For her, developing what she refers to as ‘situational intelligence’ is vital if the in-house counsel is to ‘take people with them’ in a certain direction. She goes on to state that it is not enough to provide ‘codified and highly rational information’ – the general counsel must be able to put that information into a business context for the board, with an ‘awareness’ of their disparate agendas.

Bateson says that even having a commercial mindset alongside technical excellence may still not constitute the complete package. She states that: GCs ‘believe that a strong business case with sound legal information compels a board to adopt a logical path. Reality suggests that failure to present a richer context with intelligence about people’s attitudes and likely future behaviour makes board engagement unlikely. Presenting a holistic picture that combines facts with recognition of people’s motivations ensures that voices are more readily heard.’

In helping GCs step up to the board, Bateson has found that they are motivated by a desire to become a business partner, rather than a compliance auditor. She says that achieving that goal requires an understanding that a collection of board members are compelled by arguments other than solely logical ones.

She concludes: ‘Boards seek a range of strengths in the boardroom, including forensic examination skills and robust thinking. The thinking rigour, analysis and conclusions of a GC must be balanced with the entrepreneurial strategies of the best companies.’

Lighting the way?

David Anderson advises clients on governance across North America and the UK and says that it is not unusual in the US and Canada to have lawyers on the board. He states that an increased interest in risk globally is leading companies to rely more heavily on the GC to speak to the board on processes with a regulatory or compliance dimension. Although industry-specific to the more regulated sectors, Anderson feels there is a broader trend of a greater proportion of management speaking to the board to give them a better ‘understanding of the totality of the company’s internal functions’.

However, Anderson highlights the difference in the composition of boards in the UK, compared to North America, which tend to be a lot more independent of management.

He says: ‘In North America, GCs are considered to have a broader understanding and contribute to business thinking more fully. I’d still not say they are the core decision makers, but there is a trend towards a Chief Legal Officer role. But because they are part of management and serve the board, they are less likely to be on it.’

Bank of Ireland in-house solicitor Patrick Ambrose is also the author of *The Inside Job: Working as an in-house lawyer*. He identifies that there are risks posed by the trend of GCs making it to board level – in that the primary role of a legal adviser is to remain independent and impartial. Ambrose advises general counsel to be ‘mindful of pitfalls’ in taking on a board position.

He says: ‘Yes, GCs have valuable insight. They can see new laws and regulations coming down the track and help shape strategy, spot opportunities to move into a certain space or away from threats to the business. But if they step beyond their role and give commercial advice they may be inadvertently deemed to be a director and, therefore, in company law have personal liability.’

While the challenges associated with a board position may not be to the taste of every commercially minded GCs, the increase in GCs moving in that direction reflects how the role is developing more broadly. The role has evolved from being the ‘policeman who just says no’ into what Bacon colourfully describes as a ‘consigliere’, with a broader commercial and strategic focus. In that sense, the role is more important than ever to a successful business.

Reference:

Chadderton, Sam. “The evolving role of the GC.” International Bar Association. 12 May 2014. Retrieved 3/15/16 from <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=d03ba283-340a-423e-a633-9eaf42f01b1d>