



Through the looking glass

**How corporate leaders view
the General Counsel of today
and tomorrow**

September 2016



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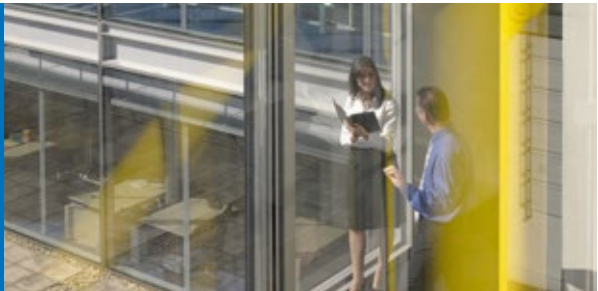
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Introduction



All senior executives worth their salt occupy a hot seat. They know that the fortunes of the company rest on their ability to excel. But some seats are hotter than others. All eyes are on the chief executive officer (CEO) when things go right or wrong. The chairman of the board has an onerous fiduciary responsibility to the shareholders. But the general counsel (GC), sometimes titled the chief legal officer, occupies a unique role on the fulcrum of risk and opportunity. He or she must protect the brand and, at the same time, help to enhance its value.

In this global study of the role of the GC, for the first time we ask corporate leaders from outside the legal function about their views on the position. This marks a 180-degree change in perspective. Our previous reports were based on the views of the GC. In our first worldwide survey of GCs, published in 2012¹, we showed how GCs are moving, in some cases boldly, beyond the confines of the law to assume more responsibility for business strategy. KPMG's second report on GCs in 2014² examined the impact of globalization and future trends on the role of a company's chief legal officer.

Now, in this third report, we have turned the tables to talk to other corporate leaders about the GC's role. Instead of asking GCs to look in the mirror, we go through the looking glass to obtain a fresh perspective on this ever-changing, demanding position. We interviewed a total of 34 business leaders from around the world, including board members, chief executive officers, chairmen, non-executive directors and chairmen of audit committees, based in Europe, North America, Asia and Africa.

Our interviews were centered around three key criteria:

1

How the GC adds most value to the work of the board of directors and to the business more generally.

2

How corporate leaders expect the GC position to change over the next 5–10 years.

3

How GCs can add even greater value in the future.

¹ *Beyond the Law: KPMG's global study of how GC's are turning risk to advantage*, KPMG International, 2012

² *Over the horizon: How corporate counsel are crossing frontiers to address new challenges*, KPMG International, 2014

Based on the interviews, we found that corporate leaders concur with the views of GCs in the previous surveys: They say that the chief legal officer is, on the whole, rising to the challenge of juggling the concerns of the business and of the law. “The role of the GC has moved from an auxiliary part of the organizational structure to one which is part of the core team,” says **Jeff Nelson, CEO of Healogics Inc.** But we detect a greater sense of urgency in the voices of other corporate leaders than among GCs in the previous surveys; the former are advocating GCs to do even more to facilitate business growth than they have up until now. “Companies need general counsel who will manage the legal function as a business that is integrated into the overall strategy of the enterprise. Exceptional legal skills are a given; it is the other attributes that will help them to reinforce their business value,” says **Phillip Ostwalt, partner, Advisory and Investigations, KPMG in the US.**

There has always been tension in the role of the GC between protector and enabler of value. But as the GC ventures further into the realm of business, it will become harder to maintain this balance, while meeting the expectations of the board. The challenge is a matter of degree, requiring GCs to become ever more comfortable with the technical details relevant to their business and industry, as they take on positions of increasing influence, necessitating broad, incisive decision-making. In the words of one Non-executive Director, the key is: “Focus, focus, focus. GCs don’t need to know everything, but they should be able to assess what is important,” says **Larry Holm, CEO and president of MPEG LA LLC.**

Given the requirement to concentrate on key details in an increasingly complex business environment, we asked the business leaders to rank the top five risks on which the GC needs to focus:

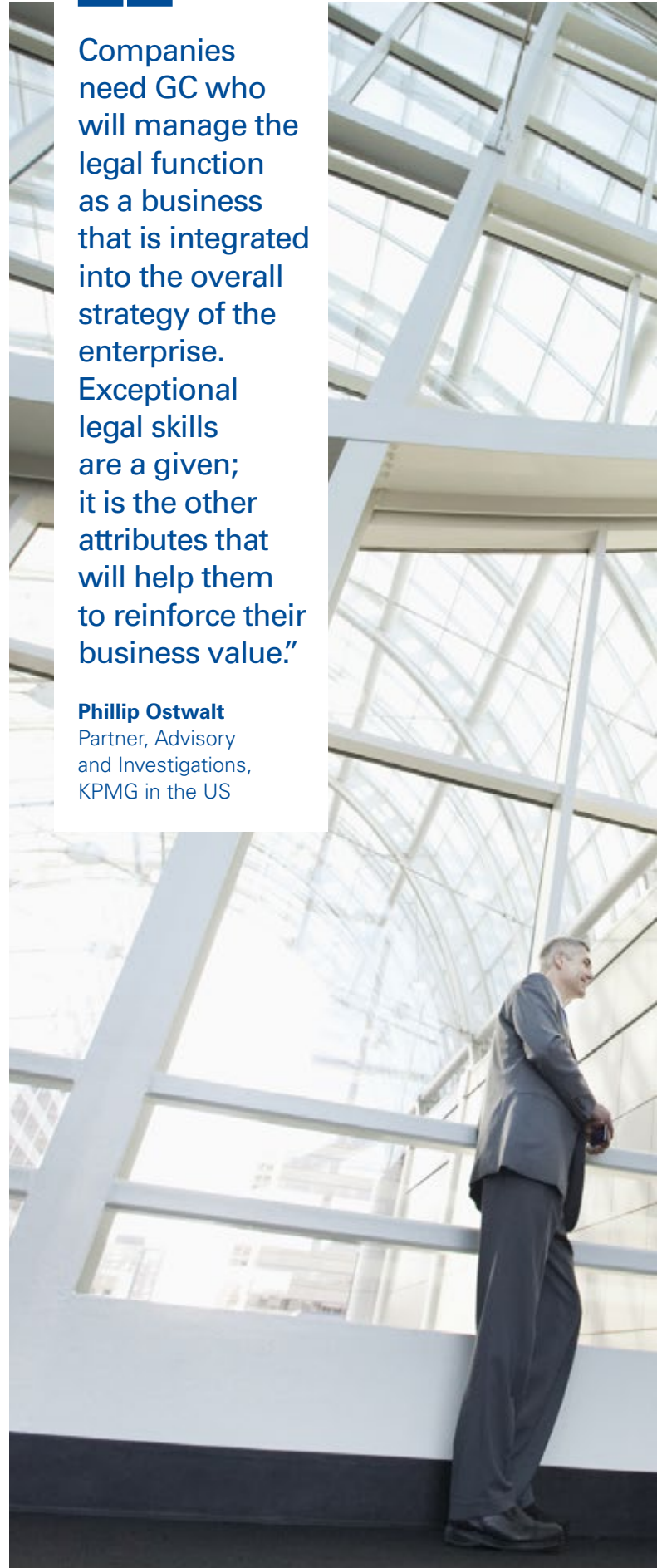


Source: *Through the looking glass*, KPMG International, 2016



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Phillip Ostwalt
Partner, Advisory and Investigations,
KPMG in the US





Unsurprisingly, regulation is top, but technology-related risks came second, with interviewees pinpointing cyber-related risks and citing technology-related risks more broadly. The threat of cyber-attack has been lurking for a number of years, but is now seen as greater than both litigation and contract risk. In our 2014 survey, GCs tended to transfer responsibility for cyber-crime to IT executives. “As businesses become more and more dependent on digital channels and technology, cyber becomes a whole-of-business issue requiring the shared responsibility of a number of leaders, including the GC and legal office, from risk assessment, prevention and detection to response,” says **Paul Tombleson, Financial Services Risk Consulting Partner, KPMG in the UK**.

The new focus on technology risk is one of several areas in which corporate officers now want their GC to play a significant role. It is very clear that the time has long since passed when the GC was expected to focus solely on legal and contractual matters.

Based on the interviews with Chief Executive Officers, board directors and others, we have developed a road map for the new paradigm, which encompasses five main attributes that describe today’s best GCs:

1 Business leader

Providing insightful commercial advice to the other senior executives and the board, based on sound legal principles.

2 Risk manager

Being constantly alert to and vigilant against an increasingly broad array of global threats to the company, and handling them accordingly.

3 Technology champion

Leading the change in mindset, from technology as a stand-alone, isolated specialism; to the all-pervasive reality of doing business in the digital age.

4 Key communicator

Adeptly handling communications with key stakeholders such as the board and investors, as well as effectively communicating with regulators and internal teams.

5 Builder of corporate culture

Setting a tone of trust at the top and building a risk-aware culture in which compliance is not seen as a straitjacket, but as a source of competitive advantage.

The onus is placed not only on the GC to overcome these new and greater challenges, but also on other corporate leaders to help the GC play a more comprehensive role. GCs cannot do all this alone, nor should they.

We will examine these five attributes in more detail.

Business and the law



This broad advisory role is critical and is just as important as simply presenting an independent perspective or being a sounding board. Corporate leaders are looking for business insights based on what is permitted by law.”

James McAuley
Partner, Forensic and
Dispute Advisory Services,
KPMG in Canada



Our board-level interviewees generally expected the GC to provide strategic advice to the CEO and the board in the formulation of key business decisions. Many of the corporate officers and board members said it was important to broaden the GC's role from dealing with strictly legal matters to addressing the evolving demands of the business.

By weighing the commercial and the legal issues, GC are answering the need to do much more than say 'no' and are finding creative solutions to business problems. "What I say to my GC is that you're like a referee. You have a red card, but you can't use it too much and deprive the company of opportunities. Instead, you should anticipate the issue earlier to avoid having to use the red card," says the **chairman of a national food services company**.

Taking a different slant, Nelson points out that the general counsel should be the "business partner that can translate business strategy into a workable framework within our regulatory environment." A number of interviewees said they expected the GC to be an active partner with leaders of the operating divisions, but also acknowledged that the chief legal officer must also act as a business advisor to the company's directors.

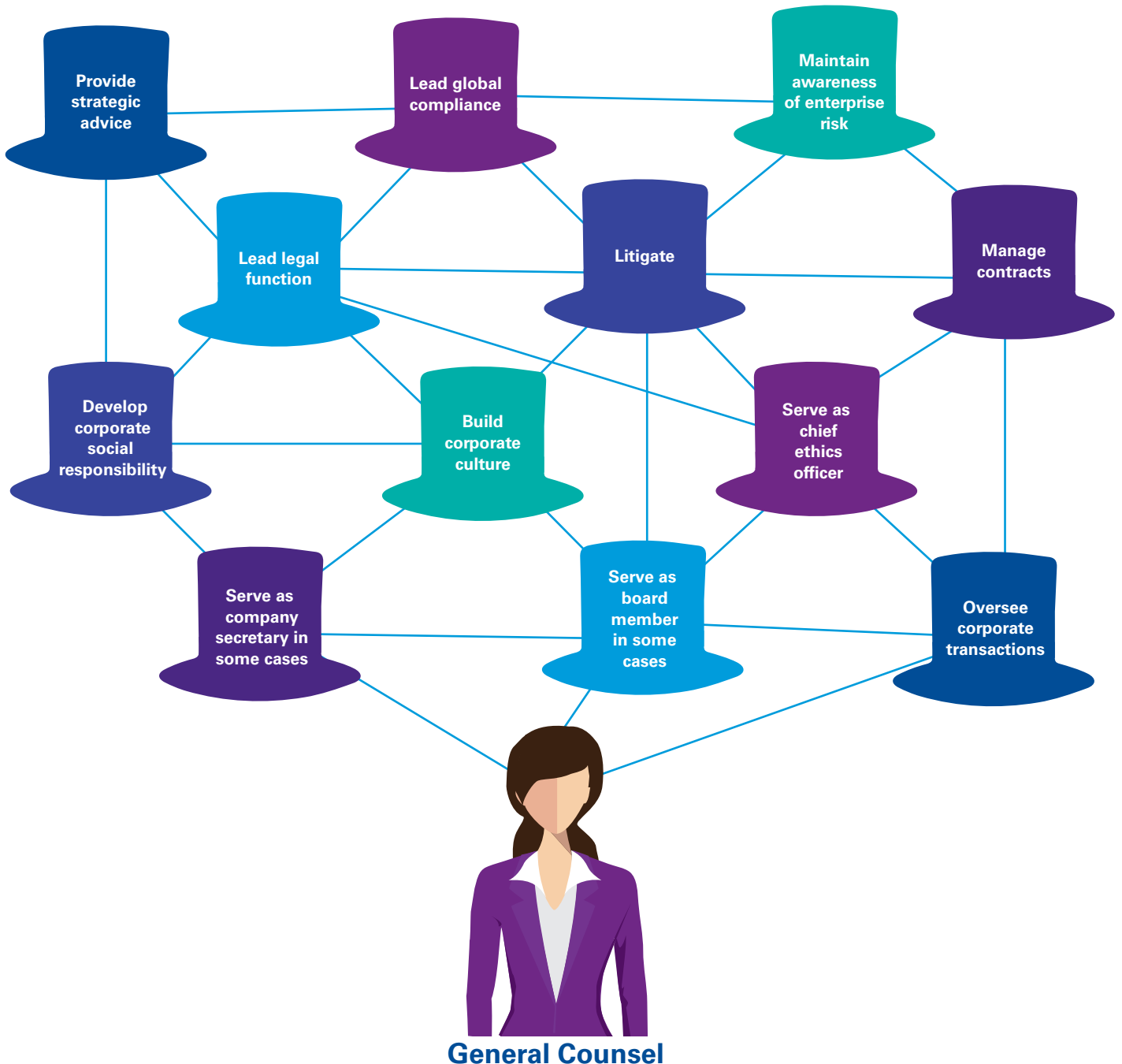
Clearly the GC will be expected to provide sound legal advice, first and foremost, bearing in mind all relevant regulation and law. But critically, the legal advice must also be framed within the appropriate context. "There is an expectation that GCs have sufficient understanding of the commercial imperatives so that they can present a range of options that would work for the business. The advice has to have a commercial context," says **the managing director at an Australian insurance company**. "This broad advisory role is critical and is just as important as simply presenting an independent perspective or being a sounding board. Corporate leaders are looking for business insights based on what is permitted by law," says **James McAuley, partner, Forensic and Dispute Advisory Services, KPMG in Canada**.

As a company expands its borders and reach, there are many opportunities for GCs to develop and demonstrate their commercial expertise. It is critical that GC act on the business in a positive way in relation to enterprise risk, rather than simply shutting down options without adequate research. "As the GC of a large multinational group doing business around the world in diversified products, I was often involved in commercial discussions around enterprise risk. As someone taking the final call on that risk, my safest option was always to dismiss opportunities. However, it was vital to appreciate the potential commercial significance of each decision, and deliberate accordingly. GCs must use their legal expertise to add commercial value, rather than stifling it. Perhaps most importantly, modern GCs cannot make impartial, purely legalistic decisions from the sidelines; they must exercise judgment on risk and opportunity from the front, harmonizing legal insight with business acumen to help guide their company through the big decisions," says **Abhijit Mukhopadhyay, GC of Hinduja Group**.

Opinions were mixed among interviewees on the GC’s relationship to the board. Most argued that GCs would lose their independence if they were members of the board (as noted by a senior NED at a UK bank), but also felt it was necessary for GCs to attend board meetings. The prevalent thinking was that the GC is likely to be the only legal brain in the room and needs to be present to offer legal advice to the board. The US is perceived as being further along the road to full board inclusion than the UK, as commented on by the **chairman of a large UK company**: “In the US, the GC role has been more of a board position for a while, and this is how the GC role is evolving within the UK.” It would appear, therefore, that while the debate regarding the GC as a board

member continues and varies from country to country, the benefit of having the GC present at board meetings, in one form or another, is increasingly beyond question.

In the process of deepening and broadening their involvement in business matters, it is clear that the role of GCs is becoming ever more ‘pervasive’ in the company. They are responsible, formally and informally, for more and more areas of the business. These include “litigation, regulation, business alliances and outsourcing, corporate social responsibility, compliance, ethics, etc.,” says **Joseph M DePinto, president and CEO at 7-Eleven Inc.** This is only a partial list, since based on our study GCs are commonly expected to wear all, or some, of at least 12 hats (see diagram).



Source: *Through the looking glass*, KPMG International, 2016

This pervasive involvement in the business leads to a tremendous increase in the complexity of the work of the GC, who is also ever more likely to be involved in the overarching strategy of the enterprise. Strategic decisions could cover, for example: fast-changing threats to the company; the continuous evolution of regulation; a multi-jurisdictional footprint as a result of global business expansion; rapidly developing technologies; and disruptive business models. Fundamentally, the GC is expected to have a firm grip on the minutiae of business, while also playing a bigger part in the company's overall game-plan. **Larry Hirst, former chairman at IBM EMEA, NED at ARM Holdings plc, and SID at Mitie Group plc**, commented that to achieve all this, "General Counsel need constant education."

The list of skills required of the GC may seem daunting, but the demands from the rest of the company are going to continue growing. For some GCs, acquiring all of these attributes may be a tall order, but not an impossible one. The indication is that they are already doing this and doing it well.

"The legal ivory tower disappeared years ago. Now, the chief legal officer has to develop the skills of the in-house legal team through training programs, mentoring and embedding the rising legal stars in the business units to learn the ropes," says **Stephen Ball, partner, Financial Services, KPMG in the UK and formerly the GC at Bankers Trust (now Deutsche Bank) and Nomura International**.



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Managing risk is an opportunity



This is an area where GC tend to have an advantage over other executives. Their legal training is based on critical thinking. When combined with a deep business understanding, they see both the dangers and opportunities lurking over the horizon."

Fernando Cuñado Garcia-Bernalt
Partner, Risk Consulting,
KPMG in Spain



The most obvious area where the GC role is broadening is in the field of risk and compliance, because companies face a widening range of threats, as they expand the geographical range of operations. This theme was highlighted in our two previous GC surveys, and all the corporate leaders interviewed for this third report talked of the crucial role GCs play beyond protecting the company from legal harm. They tended to be agnostic on who is ultimately responsible for overseeing and mitigating risk, although often the risk and compliance functions report to GCs, showing their importance in overseeing risk management. In one case, the GC reported to the chief risk officer. Either way, the GC almost invariably “works with Risk and Compliance to optimize business culture,” says **Roger Cornick, chairman at Aberdeen Asset Management**.

For the GC, as well as others, business optimization is a new way of thinking about risk that goes beyond protecting the brand, toward using risk management as a tool to enhance the value of the business. Regulation is an example of where GCs can unlock opportunities embedded in business risks. By predicting how and where regulations are going to change in the future, companies can prepare for them and gain a competitive advantage. “The increasing role of regulation in business is driving a greater focus on merging strategy and regulatory insight,” says Nelson.

GCs are uniquely positioned to think ‘outside the box’. Their powers of critical thinking enable them to see problems and opportunities from several points of view. They must “consider the risks the company hasn’t thought of,” says **Alan Hagerman, chair of the Audit Committee at Precision Drilling Corporation**. Legal training will also assist the GC to think in an objective, reasoned way, ensuring a dispassionate lens is applied to issues that might otherwise cause emotive or snap judgments. The best GCs are “identifying and unlocking opportunities often disguised as business risks,” says the **CEO at a leading Indian consumer company**.

With their knowledge of the law, GCs are uniquely placed to interpret risk as a business opportunity. “This is an area where GCs tend to have an advantage over other executives. Their legal training is based on critical thinking. When combined with a deep business understanding, they see both the dangers and opportunities lurking over the horizon,” says **Fernando Cuñado Garcia-Bernalt, partner, Risk Consulting, KPMG in Spain**.

A corollary point here is that the increasing involvement of GCs in the running of the enterprise raises to a new level the dilemma of being both a legal guardian and business strategist. Some of the interviewees recognized this. The GC manages “a really intense balance between safeguarding the company and what the company needs to do to grow,” says **Brad Mason, president and CEO at Orthofix International, NV**. The potential conflict of interest for GCs, of course, is nothing new. “The challenge is to maintain an independent point of view when the ultimate client, the company (i.e. the CEO), is the only client you advise and that can affect your compensation,” says the **CEO of a global real estate investment trust**.

“Managing the conflict between the company and the individual, between the opportunities and the risks, between business growth on the one hand and regulatory and legal compliance on the other, is at the core of the GC role. Indeed, this intrinsic and unavoidable tension is itself an opportunity to become ever more adept in the balancing of competing objectives and demands,” says **John McGuinness, partner, Forensic and Dispute Advisory Services, KPMG in Australia**.

General Counsel should embrace technology and not fear it





The GC is often the interpreter for the board, required to decipher technical language into layman's terms in order to ensure adequate consideration, at the highest level, of the risks and opportunities that technology brings. For this reason, as much as any other, GC must embrace technology, not fear it."

Annabel Reoch
Director, UK head of
Anti-Bribery and
Corruption,
KPMG in the UK



Technology is surely the GC's greatest enabler and biggest challenge. Most GCs do not have a technical background, but more and more of the work they do requires an understanding of how technology affects their businesses. They need to understand what the technology does, what it can do, and the associated risks. GCs must make it their business to understand emerging trends such as opportunities to profit from the Cloud or the implications of block chain technology. This point was reflected in the interviews we conducted. Critically, the GC must be alert to all the risks and opportunities arising from a technology-driven world.

"The GC is often the interpreter for the board, required to decipher technical language into layman's terms in order to ensure adequate consideration, at the highest level, of the risks and opportunities that technology brings. For this reason, as much as any other, GC must embrace technology, not fear it," says **Annabel Reoch, UK head of Anti-Bribery and Corruption, KPMG in the UK.**

The biggest technological worry for the GC, as with other executives, is the threat from cyber-attack. Clearly, this is not a concern solely of the legal function; information security specialists have to design defenses that mitigate the threat. But the GC is seen as responsible for minimizing the fallout from such an attack, such as the impact of losing the public's trust, following a data breach: "Cyber-attacks now act as a tax on humans, bringing with them a whole new raft of constantly evolving laws and regulations. GC must be at the center of this storm and have a handle on the many issues and threats which cyber-crime and the proliferation of new mediums of technology and data storage throw up," says Hirst.

There is no longer an option for legal officers to absolve themselves of responsibility. "GC can no longer pass the problem to the IT department; they have to be involved in scenario planning and crisis management, and this requires a deeper understanding of the technical issues at stake if they are going to be effective in assessing and mitigating this risk," says **David Swiney, principal, Forensic and Dispute Advisory Services, KPMG in the US.**

Technology has a marked impact on all future business and risk considerations. "Businesses continue to derive ever-increasing benefits from the speed, proximity and efficiency delivered by technology. However, the questions arising from international data sharing, email communication, systems integration and cyber threats require examination within the wider framework of risk management, with multidisciplinary input. It is no longer adequate to assume that the system experts should be the sole guardians of their consequences," says **Henry Knowles, GC/company secretary at Vesuvius PLC.**

The impact of technology on the GC is far wider than just the much-publicized 'cyber-attack' threat. As disruptors upend traditional business models, corporate leaders noted that the GC will need to advise on how to operate in industries where the legality of business models is not well established, such as the markets for accommodation (e.g. Airbnb) and ride sharing (e.g. Uber).

Social media is an example of a technology creating both a risk and opportunity, as its use can make or break a company's reputation. The majority of interviewees noted that GCs must play a role in developing guidelines for employees to use social media to respond to customers and to develop a web presence. This is a striking contrast to the views of GCs in our 2012 survey, when more than 70 percent of the GCs interviewed considered the risk from new technology and social media over the next five years was negligible.³

Technology was also cited as an important tool to help the GC improve efficiency, at a time when they are continually being asked to do more with less: "New technology helps the GC to be more responsive to the real-time demands of the C-suite of executives," says the **CEO of a large consumer services company**.

Companies are making greater use of data analytics and are increasingly moving from descriptive analytics (where technology is used to compress large tranches of data into more user-friendly statistics) to predictive analytics and prescriptive models that extrapolate future trends and behavior. The Office of the GC is being transformed by this process, for example, when performing due diligence on M&A targets or monitoring global compliance.

"New technology provides GC with the tools to manage workflows and records, including litigation and contracts, as well as predictive coding for document management. Today, GC have to be proficient in e-disclosure and e-contracting, as well as familiar with the protection of data and intellectual property," says **Michael Peer, partner, Forensic and Dispute Advisory Services, KPMG in Central and Eastern Europe**.

It is clear that technology is a multifaceted aspect of business that cannot be ignored. It is also both a huge risk and an enabler for GC, spanning everything from the threat of cyber-attacks and the devastating consequences they can have, to the opportunities inherent in the business moving into a new and unregulated area, made possible by technological innovation (for example, the rapid expansion in social media and the opportunities this opens for free and effective advertising and brand development). The interviews with senior executives made clear that GCs need to have a firm grasp of cyber issues because they are best placed to harmonize their understanding with the wider business operations, from a compliance, regulatory and enterprise perspective. Simply put, the GC must be on top of technology issues, to remain on top of business trends.



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³ *Over the horizon: How corporate counsel are crossing frontiers to address new challenges*, KPMG International, 2014



Communicator,
connector,
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The new focus on efficiency and value is adding an increased strain to the GC's already diverse workload. However, the driver behind this focus is sound, as there are great savings to be made through the effective management of in-house teams, combined with streamlined and specific outsourcing protocols."

Shashank Karnad
Partner and COO,
Forensic Services,
KPMG in India

All corporate leaders are required to excel at communicating, especially in times of crisis, such as a serious allegation of corporate misconduct or the discovery of the theft of a large sum of money. GCs are no exception; indeed, as the role shifts from the back office to the front of the C-suite, he or she must be able to communicate clearly and directly with people both inside the company and outside it.

Perhaps the most important component of the GC's job as a communicator is to facilitate information flowing smoothly between the board and the management. Some of our interviewees had real concerns that if their GC lacked board presence, they would not be able to handle a fast-moving crisis or make an impact on general board discussions. "Currently, GC lack a board presence, not because of their legal awareness, but more because of their presentational and communication skills. The narrowness of their experience prevents GC from getting on to the board. The expectation is certainly greater now, and there is more of a requirement for GC to be on the board, given technology and the speed at which events take place," says **Alistair Johnston, previously FTSE 100 director.**

The GC's increased visibility makes it imperative that they be able to communicate forthrightly. "GC need to broaden their personality. They need to embrace becoming a more visible part of the business and accordingly develop their presentation style and public personas. It is not acceptable or possible anymore for GC to be introverted or operate in the background," says Hirst.

"Problems happen in even the best-run organization. But how we deal with them is a measure of the sort of organization and people we are. The role of counsel when a problem arises is to give management and employees confidence and resolve, through effective communication and a full understanding of the issues. People need to feel that their GC is a pair of safe hands, that there is no one they'd rather have by their side. Criminal and regulatory matters are worrying for non-lawyers, so it's critical to remember that effective communication is often less about the details and more about showing that there is a clear, effective plan in place where all the bases have been covered. In any crisis or critical situation, that's the most important message to get across," says **Carroll Barry-Walsh, managing director and legal counsel, head of Regulatory Inquiries and Investigations Group at UBS.**

The GC must become adept at employing a range of communication and managerial styles and approaches. While acknowledging the importance of a confident and trusted GC in a crisis, the interviewees also stressed the importance of day-to-day management and communication within the GC's own in-house team. Effective delegation and personnel management is just as much a part of the job as handling litigation and presenting issues to the Board. It all depends on the circumstances: "In times of peace, the GC needs to be good at anticipating legal and other issues arising from board discussions and providing sound advice and input to

strategy and tactics based on a good all-round understanding of the business. In times of war, the GC needs to excel in the legal role, marshalling and driving an already well-prepared team and a well-briefed cadre of external advisers," says **Alistair Johnston, previously FTSE 100 director**.

Regardless of the context, executives agreed it has become more important than ever for the GC to optimize efficiency internally, by balancing the outsourcing of work against the need for a strong in-house team of lawyers. In some cases, this has led to a division of responsibilities among a number of legal officers, explained DePinto. Indeed, in many cases the GC is not involved in the day-to-day running of the legal departments, with the administrative duties allocated to a specialist company secretary. Even so, GCs are expected to lead their department, to enhance efficiency, business synergy and cost effectiveness, and to ensure they do not overpay for external legal counsel. They must do this while providing the best possible legal advice.

"The new focus on efficiency and value is adding an increased strain to the GC's already diverse workload. However, the driver behind this focus is sound, as there are great savings to be made through the effective management of in-house teams, combined with streamlined and specific outsourcing protocols," says **Shashank Karnad, partner and COO, Forensic Services, KPMG in India**.

"We're trying to change that [the perceived lack of efficiency in the legal function] by putting processes in place, such as document timelines. This is an example of how we can bring traditional corporate measurement, such as key performance indicators, into the GC function," says the **CEO of a global real estate investment trust**.

The communication skills that the GC must possess are clearly diverse: "Excellent judgment, critical thinker, recognize discontinuities, collaboration, developing trust of the board and management team, true conciliator, someone to bounce ideas off of, gravitas and intellect to have a debate to come to a better decision," says the **CEO and chairman of a public multinational chemical company**. Perhaps the key point from this quote is the perceived importance of fostering an atmosphere of trust. GCs must excel at expressing legal, regulatory and compliance concerns in business-applicable, direct language. They must be at ease in the boardroom, discussing the regulatory implications of a new strategy; in front of external stakeholders, rebuilding customer confidence in a crisis; and with their in-house teams, managing personal incentives and effectively delegating administrative minutiae. At root, this means securing the trust of those to whom they are speaking.

"As the business environment gets increasingly complex, the role of the GC gains in influence. GC need to create an environment of trust across multiple stakeholder groups such as the board and executives, beyond just the CEO. Effective, straightforward and powerful communication is at the foundation of an effective GC's tenure," says **Melanie Richards, vice chairman, KPMG in the UK**.

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Builder of a risk-aware culture



The GC must have an awareness of all the non-business elements (applicable regulation, as well as compliance and legal issues), but over and beyond that, an appreciation of the direct business ramifications impacting the execution of the strategic vision; in other words, the risks and opportunities over the horizon, including those that impact reputation and culture as much as the bottom line. Only in that way can the GC be truly risk-aware.”

Jeremy Barton
General Counsel,
KPMG in the UK



As the keeper of the corporate conscience, the chief legal officer must help to create a work environment in which employees are encouraged to be aware of risks and not merely avoid them. “The GC works closely with Risk and Compliance in attempting to optimize our business culture so that we appropriately address global regulation and the legal requirements of the many jurisdictions in which we operate,” says Cornick. This means encouraging business behavior that pre-empts risky activity, by setting the right tone at the top. “The success is in early case management, or having a culture where a broad set of personnel act and behave so that the entity effectively manages its risk exposures,” says the **CEO of an international consumer transport business**.

A number of interviewees highlighted the need for GC to think more about the future in achieving this goal. “They need to be aware of business disruptors,” says Walther. “They should be better at anticipating the issues now, compared to the way they were in the past,” says the **chairman of a food services company**. One CEO was even more demanding: the GC needs to be “thinking ahead — like in the game of chess — not only one or two turns, but many, many turns ahead.” The overall consensus of our study is that the GC should be the monitor of future trends; they should guide the company’s conscience and inculcate a risk-aware, opportunity-focused ethos.

“In the investment management industry, the line between pure legal work and regulatory/operational risk management is becoming increasingly difficult to discern,” says **Umar Aziz, GC, CCO of BH-DG Systematic Trading LLP**. “This is reflected in the regular coupling of the CCO function with the GC function — a marriage which is testament to both the increasing complexity of operating in the sector and the benefits of technical legal skills in processing the ever-shifting regulatory sands. GCs have to have a thorough understanding of the risks their businesses face in the markets they operate in, match risk appetite to commercial opportunity and be able to guide their colleagues calmly through.”

Risk awareness unites the GC road map set out in this report. A risk-aware culture will also be the first to spot viable business opportunities, the easiest to manage from a risk-mitigation perspective and the best prepared to handle the new realities of the digital age. The only way to build such a culture is through constant and effective communication of the business landscape, requiring diverse, cross-specialist knowledge and skills, according to the interviewees.

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Jeremy Barton, General Counsel, KPMG in the UK.

A GC’s ability to build a strong corporate culture continues to be a major strength in a successful business.

“Businesses that thrive need boundaries in which to allow their people to deliver and innovate. It’s essential that everyone understands their boundaries; so, developing a set of rules that are abundantly clear and easy to navigate is a key role of the modern General Counsel. Being clear on what is expected in terms of compliance with legal obligations and internal policies, what’s acceptable in terms of risk appetite and what ethical considerations are ‘non-negotiable’ is not a constraint; it’s a fundamental facet of a successful business,” says

Alison Kay, National Grid.

Regardless of the other burgeoning elements of the GC’s role, the performance of the in-house counsel will always be evaluated, to a significant extent, by the number of crises prevented; the number of times the company’s reputational damage is effectively mitigated; and the litigation cases either won, expeditiously settled or avoided. The better the GCs build a risk-aware culture within the company, the better prepared they will be to face these tests, which most clearly display their core skills. “Ultimately, the risk-aware culture is what becomes manifest if the GC is doing everything right. If he or she is seeing the risks early, understanding the shifting trends, communicating well at all levels of the business and ensuring that their key concerns and insights make an impact at the top table, then an engrained and genuine risk awareness cannot but become a part of the company’s fabric and makeup,” says **Kathryn Britten, chairman of Forensic, KPMG in the UK.**





Ultimately, the risk-aware culture is what becomes manifest if the GC is doing everything right. If he or she is seeing the risks early, understanding the shifting trends, communicating well at all levels of the business and ensuring that his or her key concerns and insights make an impact at the top table, then an engrained and genuine risk awareness cannot but become a part of the company's fabric and makeup."

Kathryn Britten

Chairman of Forensic,
KPMG in the UK



Conclusion

The key value added, the most important future trend, the most important growth area



Do corporate leaders fully appreciate and benefit from the advice that they can receive from the GC? Do they solicit it whenever possible and seek their legal officer's expertise and advice at every turn? Do they see the GC as an extension of, and a leader in, the commercial enterprise? These are the ways that executives and board members assess the value of the GC."

Bryan Jones

Partner, Forensic and Dispute Advisory Services, KPMG in the US



Three core messages emerged from the interviews we conducted, which reflect the three key criteria we established at the outset: how GCs add most value to the business; how they can expect the position to change in the next 5–10 years; and how they can add even greater value in the future. The messages provide compelling food for thought, and underpin and inform the five-point road map set out in this report.

The **key value** that GCs add to the business and the board, is their holistic overview of the company, encompassing everything from ground operations to overarching strategic planning. Great GC know what is happening within the business, they understand the strategic vision and the regulatory and legal climate, and they can see the risks and opportunities around the corner. No one else on the board has this legal and business perspective. GCs must use this to their, and the company's, advantage, through "focus, focus, focus".

The most important **future trend** which GCs must be on top of is the continuing development of technology. It is no longer an isolated specialist area or something which can be pigeonholed and managed as 'the threat of cyber-attack' or 'emerging payment systems'. It is all pervasive. The risks and opportunities are huge, and are inseparable from the risks and opportunities of the business itself. The GC must fully embrace the realities of doing business in the digital age.

The **key growth** area is communication across the business. This covers all communications, including presentations to the board and shareholders, press conferences, and internal meetings with the in-house legal team and other colleagues. GCs must be adept at creating trust in all their relationships. With this important skill, they will be in the best position to handle a crisis, add most value in day-to-day affairs, drive a risk-aware culture and have most impact in top-level, strategic discussions.

The success of the GC is ultimately measured by the perception of the board and the C-suite regarding the value of their GC to the business. "Do corporate leaders fully appreciate and benefit from the advice that they can receive from the GC? Do they solicit it whenever possible and seek their legal officer's expertise and advice at every turn? Do they see the GC as an extension of, and a leader in, the commercial enterprise? These are the ways that executives and board members assess the value of the GC," says **Bryan Jones, partner, Forensic and Dispute Advisory Services, KPMG in the US**. If the answer to all of these questions is a resounding 'yes', if GCs feel they have the road map covered, the technology mastered and communication down to a fine art, then our research suggests that business leaders believe they are excelling. They are an exemplar of their hugely challenging, but unique, corporate position at the fulcrum of risk and opportunity.

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Supplementary reading materials



***Over the horizon:
How corporate
counsel are
crossing frontiers to
address new
challenges***

May 2014



***Beyond the Law:
KPMG's global
study of how
General Counsel are
turning risk to
advantage***

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