
The Future Boardroom: Business Strategy Powered by Legal



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Legal, strategic, and right

The world of the General Counsel (GC) and legal department is changing radically due to disruption in the legal profession and the business at large. The modern GC no longer simply considers whether something is legal, but whether it is legal, strategic, and right.

The GC holds valuable intelligence about the organisation, customers, and partners thanks to their 360-degree visibility of the business. With the right technology in place, the GC can put that intelligence to work as a valuable strategic advisor to the business.

Changing roles

Smart GCs are negotiating their way through change, reimagining the value of legal in the boardroom, and powering new legal strategies throughout the business.

It is not always appreciated internally that the GC works for one client: the company. The GC works with everyone including the CEO or management, but is accountable to the board of directors, shareholders, and other stakeholders. GCs are entrenched in the business, attending board meetings and committees, to the extent that there is a global trend of GCs becoming members of the executive management team.

At a high level, the GC offers legal expertise and advises on risk exposure, liability, compliance, and governance issues. This responsibility extends to the company's reputation and integrity. This places the GC in a unique role as someone with a single focus but with 360-degree vision of the organisation. This gives them specific key challenges as they seek to enhance the role across the business, which is creating a new kind of confident GC.



58%

of law departments have seen an increase in workload in the last 12 months.

Thomson Reuters 2021



29%

of law departments report a decrease in legal budget and spend in the last 12 months.

Thomson Reuters 2021

The difficulty in leading this challenging and expanding role is compounded by the need to continually “do more with less”. In recent years, a range of technology-based solutions have emerged to help in-house lawyers meet such increasing demands, ranging from legal tech products through to cloud-based platforms, streamlined processes, and artificial intelligence-based solutions. Technology provides tools that are freeing up time and resources, enabling GCs to focus on the wide range of business issues they are expected to handle.

However, there are both business and legal issues presented by the abundance of technologies available today. Information is held in different places and often siloed. The multidisciplinary nature of legal work means GCs have a broad remit, managing a range of challenges in areas like contract and document management, outside counsel and other vendors management, enterprise legal operations, matter management and legal intake, among others. It is easy to see how all this different information can become siloed.

This can impact the business because there can be a lack of visibility on many different fronts due to increasing compliance burdens. Regulatory costs are one of the biggest challenges for business. For small and medium-sized enterprises, they create a barrier to innovation, the ability to secure new business and their capacity to enter new markets. For larger companies, regulatory penalties are used by governments to forge policy and create compliance cultures around specific policy areas, creating potential reputational risks.

The leadership matrix

We hear a lot about GCs taking up more strategic positions within business, but what does this mean?

The GC today needs to navigate a more complex organisation, demonstrate strong analytical skills, and exhibit a deep understanding of strategic challenges. The role is dynamically evolving in response to some key global trends, which define a new matrix for the legal department.

Shifting fundamentals:

The COVID-19 pandemic has caused unprecedented disruption to businesses everywhere and its impact will likely be felt for several years. The unfolding crisis has demanded that GCs are simultaneously reactive and proactive. Rapidly changing regulations and government measures, coupled with a surge in workload from parts of the business that need quick, up-to-date advice demands incredible agility from legal departments whose crisis management skills will be put to the test. GCs must also ensure that their organisation is resilient and help them to navigate immediate risks and anticipate future ones, providing innovative solutions to extraordinary problems.

Geopolitics:

Globalisation has compelled GCs to master more difficult and complex matters of ever more demanding regulatory regimes and enforcement practices, jurisdictional and political challenges, and a range of unpredictable economic trends. Law does not operate in a vacuum; it plays a major part in the economic and geopolitical dynamics whose impacts businesses are forced to manage. Decades of globalisation have led to an increasingly connected world where businesses are global just by virtue of having a website. However, aspects of globalisation are now under challenge, trade wars are becoming a little more common, and national interests and sovereignty are increasingly being pressed into service. With the right horizon scanning tools, the GC can offer legal insights into a range of political trends and events that ultimately affect daily business decision making. Business conduct is under intensifying scrutiny, putting companies under increasing pressure to promote transparency, disclosure, and accountability.

SHIFTING PRIORITIES SINCE THE OUTBREAK OF COVID-19

SAFEGUARD/PREVENTATIVE

- Keeping abreast of dynamic COVID-19 regulations
- Ensuring compliance
- Identifying potential disputes and monitoring/mitigating
- Prepare for issues that may arise as regulations change

IMPROVE EFFECTIVENESS

- Accommodating surge in workload
- Being close to the business
- Turning around work quickly
- Providing innovative advice to overcome obstacles
- Accurate reporting/analytics

EFFICIENT

- Technology to support agile working teams
- Bolstering with flexible resources
- Project management systems and expertise
- Technology to support workflow automation
- Maximising value from spend on external support

Decision making:

The GC has become a trusted advisor to the CEO. However, corporate governance issues should place the center of the GC's role closer to the Board of Directors and a range of board committees. An expanded company secretary role is becoming pivotal to improving corporate governance practices as the role shifts from administrator to key advisor and active partner to the Board of Directors in promoting board effectiveness and good corporate governance. In-house counsel, mostly the GC, are also serving as corporate secretary or Chief Governance Officer (CGO). This in turn is changing how companies design, implement, and maintain a corporate governance framework to fit their needs and which meets the expectations of shareholders. It is now more common for businesses to give the GC a seat at the table and access to the C-suite. GCs are finding that they are engaged in regulatory change and lobbying efforts, placing the role at the center of the discussion internally and externally. Lawyers' unique training, way of thinking, analysis, and problem-solving skills can bring greater integrity to the decision-making process. However, the GC and the legal team must reflect a changing reality and be ready to guide the business through a multitude of new risks. Legal expertise must be more extensive and brought into a variety of management processes at an earlier stage, integrating the role more closely to the business. This is a radical change from the traditional position of reacting when issues arose, with the legal perspective now proactively informing decisions and creating opportunities.

Communication:

The internet, social media, and the smartphone have revolutionised communication. It is essential that the legal team communicates more effectively with business decision makers and a variety of other stakeholders. Lawyers are risk-averse and always look for precision and exactitude in their communication, but this often means communication is written in legalese and not readily understood by other parts of the business. It is also at odds with a communication environment typified by the soundbite and the tweet. Lawyers can't speak like lawyers — they need to have dialogue in ways that business leaders and stakeholders can understand, so they are inspired to build legal integrity into their processes.



81%

of law departments' hirings
were for legal operations
roles in 2020.

Thomson Reuters 2021

Regulation costs:

Compliance and regulation are seen as blockages by the business, and the legal department can seem remote from the day-to-day challenges of other disciplines. The reality is that compliance and regulatory costs are being driven by political will and technology utility. The increase in surveillance, data privacy concerns, big data, and a host of other issues have a legal importance that the GC needs to take a view on, and to promote that view through internal advocacy. In all these areas, the GC has a duty to question and test internal decision making, in order to ensure there is legal integrity running through organisational decisions and their deployment across the business. To do this, the lawyers have to be in the room, and they need to be listened to. Technology can be deployed to get the data right and effective communication can be used to get the message right. For some companies this may mean a bigger cultural shift than for others — it is the GC's job to get their organisation into the latter group.

There are a number of specific ways the GC and legal department can effect change across the organisation:

- Stay at the forefront of regulatory changes in multiple jurisdictions
- Manage the risks to which the business is exposed
- Set strategic priorities in business transformation
- Champion technology in the legal department that frees up lawyers to work on more complex tasks

“Lawyers can’t speak like lawyers — they need to have dialogue in ways that business leaders and stakeholders can understand.”





**Agustin Sánchez
Cevallos-Zúñiga**

Senior Proposition
Strategy Manager -
Legal and Compliance

OPINION

Demonstrating leadership

The role of the GC is evolving from simply leading the legal department and providing legal advice to the business. Increasingly, the GC has an enhanced role, encompassing leadership and diplomacy, business partner, corporate officer of the executive management team, company representative in third-party dealings, and key negotiator in a range of strategic transactions.

The GC is becoming more involved in core business activities and strategic direction, as well as diving deeper into a range of activities such as audit, compliance, executive management, HR issues, investor and media relations, and social responsibility. Business governance has been expanded in recent decades to include more social, ethical, and sustainability objectives.

New technology solutions are replacing human effort, but they do not necessarily replace human talent. Managing talent has to be a top priority for the GC, ensuring members of the legal department are constantly upskilling to work more efficiently and are able to step back from repetition and drudgery to offer problem-solving and high-level strategic thinking. The next generation of lawyers will come equipped with stronger analytical and management skills. As a dual JD/MBA myself, I know the huge range of opportunities enabled by this combination of skills. GCs should put all that talent to work for the legal department to generate additional business value.

The key is combining technology and talent to deliver a range of legal advice, from a single contract or an M&A strategy through bringing company values to life and managing reputational issues. Perhaps the defining change for GCs today is that they need to be leaders, diplomats, and educators in an organisation that must care more about law as behavior rather than simply rules to be obeyed.

The GC balancing act

The GC and in-house legal team must manage a fine balancing act, protecting the legal integrity of the organisation while not being seen as business blockers. The legal department can achieve this by using best practice to demonstrate value in ways that can positively impact the business.

Automating certain processes in a way that legal teams can trust is key to success. This enables them to implement technology that truly adds to their work, which in turn enables the GC to focus on being strategic boardroom advisors and prove their worth.

Data:

Everything starts with data today. Big data is at the heart of the Fourth Industrial Revolution and the race to gain access to information and analytics that can inform better and more responsive solutions for business. For the GC, this means ensuring all information is centralised in one place. This in turn enables teams to monitor and measure all analytics effectively by allowing the legal department to set KPIs to prove their value to the business and to spot risks and opportunities like effective Data Privacy policies and emerging market risk.

Core:

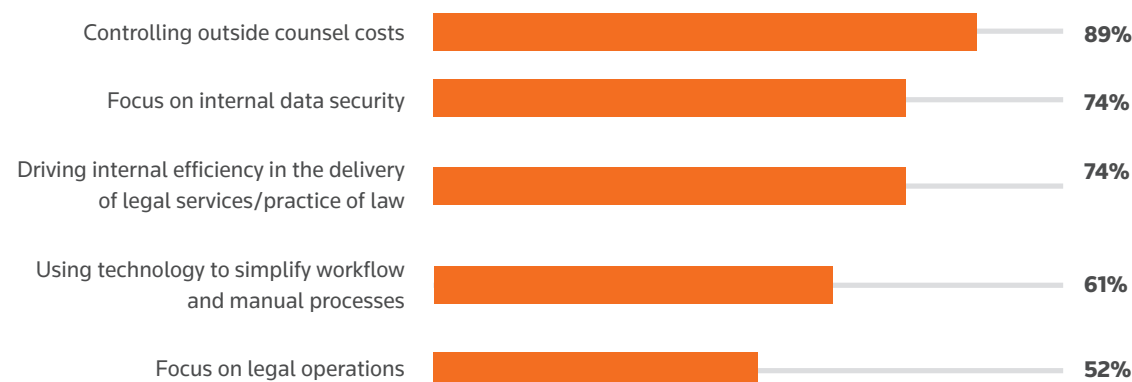
At the core of the business there should be a standard operating procedure ensuring the in-house legal department and the GC provides guidance on all decisions and arrangements that bind the company, such as contractual relationships and RFPs. Legal sign-off should be procured through a formal, timely, and efficient process at the earliest possible point.

The business can also get legal guidance in a more automated way without having to consult the legal department, including for example dynamic FAQs, playbooks automatically updated as the regulation or internal financial guidance change, and internal portals for nonlawyers to consume legal content.

Empowerment:

Doing more with less also means being more effective with less. Technology can only do so much. Ultimately, empowered people using the best tools allow teams to deliver. Technology can underpin success by working holistically on two distinct priorities. First, by using legal tech platforms that support core processes in a comprehensively organised and streamlined operation. Second, by pushing the boundaries and empowering technology to perform more sophisticated tasks that would previously have depended on human input. New legal tools in areas such as smart contracts can remove the drudgery of going through masses of documents and undertake analysis that can flag up the areas that then need human expertise. This will lead into new areas such as blockchain.

HIGH PRIORITY



Pioneering work has already started on proof of concept testing of log hashed data points from contracts on the Ethereum blockchain to create a smart contract with digital currency transaction and self-execution elements. Major legal market players are increasingly taking smart contract and blockchain technology seriously as the financial services sector explores more digital currency products. Transacting with digital currencies in many cases will require a blockchain-connected system to handle them, which in turn will need to be linked to contracts governing the transactions.

This brings in a need to develop other performance metrics that may not have been the norm previously for legal departments, the core of which will be ethics, communication, risk, and security:

Ethics:

Legal departments need to be the keepers of the flame for ethics and integrity. The GC has to embed an ethical compliance culture and desired behaviors into the legal department. Failure on this point will damage credibility across the organisation.

Communication:

Value add comes from communicating effectively with clients, other departments, and external stakeholders. Data flows are only as valuable as the insights they provide and the uses that people make of them.

Risk:

A great number of risks are financial or operational in nature. The team needs to manage legal risks both separate from and connected to other business risks.

Security:

This has to be paramount; the increasing threat of the cybersecurity landscape is constantly shifting and evolving. Cyber risk is a legal, business, and IT issue, and has to be embraced holistically.

Doing more with less

Effective deployment of technology can support engagement of the legal function across the whole business, but is only as effective as the people involved and the processes used.

Companies are investing in technology across the business. Legal technology is no exception, and is evolving at a rapid pace. While top-level buy-in for investment in legal technology is increasingly forthcoming, and technology is coming down in cost, this should not stop the legal department from providing a robust case that demonstrates the value of legal advice and strategic insight.

The use of technology has to be matched with getting the right balance between serving corporate governance and supporting the business. This combination will bring a number of tangible business benefits, which need to be rooted in legal integrity:

Technology:

Connecting the legal department through technology and effective communication with the rest of the organisation is the basis for building legal integrity into the business — and business integrity into legal work.

Visibility:

Increased visibility and oversight will ensure not only that there is legal integrity, but help avoid the kind of business and legal problems that can become very expensive later on, or that create future liabilities that would have been foreseen if only someone had the time and the data to figure things out.

Risk:

This can be positive, and when well-managed, can be the source of profit. Managing and decreasing risk can help smooth business relationships and avoid problems further down the road. It can also better equip teams to deal with uncertainties.

LEGAL DEPARTMENT BUDGET FOR TECHNOLOGY

	OVERALL	SMALL	MODERATE	MEDIUM	LARGE
Decreasing	11%	6%	19%	7%	9%
Flat/No change	60%	69%	54%	54%	69%
Increasing	30%	25%	27%	39%	23%

Commoditisation:

Where there is big data and clear rules there is increasingly commoditisation. Greater efficiency through the automation of key processes, such as contract management, means that commoditised tasks can be carried out faster and cheaper, leaving skilled talent to do what they studied the law to do.

Financial benefits:

A better connected, efficient, and productive legal team will inevitably produce knock-on financial and cashflow benefits. Good legal work saves money, while bad legal work costs money. A mistake made today may be a case of kicking the can down the road — in legal terms this can be costly, leading to increased liabilities or expense to extricate the company from a bad deal.

Self-reliance:

Automation can mean delivering more with less and doing a lot more with less time. Legal integrity also means having the confidence and self-reliance to get the job done, reducing reliance on outside counsel and saving a lot of money.

These are exciting times to be in house as new technology enables internal lawyers to dedicate more time to strategic counsel. Little wonder there is a trend of lawyers moving in house, as well as GCs taking up C-suite positions. This is a reflection of the exciting opportunities for all members of the legal department.

TOP 5 RANKING OF TECHNOLOGY SOLUTIONS IN ORDER OF IMPORTANCE TO LEGAL DEPARTMENT

- 1 E-BILLING / SPEND AND MATTER MANAGEMENT
- 2 CONTRACT MANAGEMENT
- 3 LEGAL RESEARCH
- 4 DOCUMENT MANAGEMENT
- 5 LEGAL HOLD

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