

“Is there a lawyer in the house?”

The shifting role of General Counsels

Over the last three decades, the role of the General Counsel (GC) in organizations has been gradually shifting from the old-school perspective of the policeman—called in sporadically to fix a situation—to the essential addition to any organization aiming at sustaining its growth, reputation, stability and compliance.



Although from an old school perspective the limited and defined role of the GC as rescuer may prevail, the GC's role has been molded and folded over the years due to the changing face of business and the inevitable challenges it presents. So how do today's business leaders perceive the role of GC; Is it that of protector or preacher; or both?

Defining the role of a GC has come a long way, yet may still be faced with some equivocation. During the 1970s and 80s, hiring in-house lawyers was considered the optimum solution for businesses to reduce increasing fees spent on external legal counselling. A similar trend was noticeable during and after the financial crisis of 2008 when business leaders thought that having their own in-house legal counsel was by far a more convenient means of tackling the organization's risk-related issues and reducing costs for external legal fees. Inasmuch as these are, and remain, valid considerations, the aforementioned can no longer serve as the only drivers justifying the recruitment of the General Counsel.

The typical duties entrusted to GCs can range from drafting and reviewing legal contracts, handling client negotiations, standardizing internal processes, liaising, monitoring and preventing, to the extent possible, potential litigation against an organization. While carrying out his typical duties, the GC builds on his acumen of knowledge and experience within the context of defined parameters such as the legal framework of specific

jurisdictions. While delivering their duties, GCs may also be faced with typical inherent challenges. Some practitioners may avoid disclosing certain details to their GCs, thinking probably that maintaining this "safe distance" may avoid compromising a long-awaited business deal; or trying to avoid a situation of being "lectured" on how to do their own jobs. It is those very typical challenges where GCs need to exert additional efforts to soothe and act proactively, in order to change a certain misperception about his or her role. GCs need to reconsider their own tone and mindset in communicating and advocating their views.

The typical responsibilities of the GC listed above remain essential. The question is do these duties alone suffice in the course of handling organization-wide predicaments, risky and devastating if neglected, and which may impose huge challenges to businesses yearning for sustainability and growth?

Continually evolving challenges

The foremost inevitable realities that businesses face today and that GCs have to deal with are the increasing regulatory demands and cross-border landscapes. The expansion of businesses across borders is now more prevalent than it has been during the last three decades. Geographic expansion is no longer restricted to large-scale multinationals, as even medium-sized businesses now have more capabilities to expand to new markets through



different channels and intermediaries. The pace of development and growth of the business landscape is more notable in the professional services industries. These businesses, as others, do not bind themselves to geography; yet one differentiator in their success is their willingness to understand and adapt to the cultural, business norms and ethics and the legal framework of the targeted geographies, all of which could be markedly different to those of their own countries of incorporation. Employment and nationalization laws, contract laws, principles of liability exposure and indemnification, performance warranties and professional indemnity insurance, rules governing public bids and other areas are all examples of distinct bases of the wider risk arena that professional service providers may face while operating outside of their jurisdictions.

In addition to what can be categorized as the “domestic national laws or regulations” noted above, comes the overarching supranational regulatory requirements and sanctions, which as a matter of reality have, and will continue to reshape the business world and to establish a new economic world order.

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Whether the interference by governments is right or wrong as a principle does not change the reality businesses face today. The debate on the merits of autonomous versus responsive law may continue to be a long-lasting one; as each ideology has its own objectives, advantages and disadvantages for society at large. An interesting observation though on the regulator’s intervention over the past decades, and “ironically” in economies established on the “laissez faire, laissez passer” ideology, is that such interference by governments has substantiated a doctrine in the world today that businesses may not be left “unleashed.” This can be better comprehended as a consequence of some malpractices that have led to devastating outcomes which impacted economies in the last thirty to forty years. Accordingly, the rationale behind the issuance of acts such as Foreign Corrupt Practices Act, Anti-Bribery laws, Anti Money Laundering, Sarbanes Oxley Act, Dodd Frank Act and a list of other laws and acts that tackle different aspects of business, regulated or non-regulated, is now more comprehensible.

Compliance with sanction laws imposed by foreign governments or supranational bodies follows the same argument; though the primary difference in the case of sanctions is the political driver (in most scenarios) initiating such sanctions.

Inasmuch as the argument on the enforceability of foreign rules and policies from a “sovereignty” perspective is valid, the reality also requires businesses to reconsider their views on this aspect. Some “domestic” policies have been structured in a way that –in fact– enables their scope of application to extend beyond domestic territory and reach, potentially, any market and imposing a minimum of unavoidable restraints for doing business. Some clients have no option but to be bound to a “forced marriage” with these set policies, regulations or sanctions, to an extent that it is up to the service provider to think carefully

whether it is worth shouldering these onerous obligations or refrain from working with that client and lose a strategic business account.

The way forward and the new role of GCs

So how should organizations and their GCs deal with such continuously expanding parameters, such unequivocal established realities, in today's business world? The answer lies in a change of mindset and approach, a shift in culture where the knowledge of risk is assumed by the whole organization and not by the GC alone.

Shifting to a Risk Intelligent culture within an organization now makes more sense than ever. It is becoming all the more evident for organizations to have a more homogeneous level of risk-cognizant culture among the different bodies and functions within these organizations. Awareness of risk-related matters must no longer be privileged to legal departments and senior executives; but rather "Knowledge for all" is what needs to be a prioritized goal for business leaders and GCs. Enhancing the level of awareness among departments, functions and teams should be carefully planned both by senior executives and GCs; all in an organized, tactful and timely basis so the purpose of such initiatives is made clear. Although the level of awareness may range depending on levels and functions, it is to the organization's own benefit to have well-informed leaders and teams on different aspects; all prepared and ready to identify, adapt and take action when it comes to risk-related matters. More importantly, the "tick-a-box" approach in understanding the size and impact of the noted risks does not achieve the purpose. While serving his or her organization, it is the GC's role to exert that extra effort in liaising, coordinating and educating his or her colleagues on risks in an unsophisticated and focused approach. The onus is collective, but the result can be more rewarding.

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