In Business Collaboration:

The Modern General Counsel: Connecting Legal Strategy With Enterprise Risk

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The role of the General Counsel (GC) is changing. Once regarded principally as a company's legal gatekeeper, a GC is no longer merely responsible for contracts, disputes and regulatory compliance. The modern GC is increasingly expected to operate at the intersection of law, business strategy and enterprise risk. This shift reflects a commercial reality: the most significant risks confronting businesses rarely remain confined to neat legal categories. A contractual issue can become a project dispute. An employment decision can develop into a governance and reputational problem. An acquisition can import historical tax, regulatory or licensing exposures. A seemingly routine compliance failure can ultimately require board intervention.

For a GC, the question is therefore no longer simply: "What is the legal position?"

The more important questions are: What is the risk? Who owns it? Can it be managed? When should it be escalated? And what should the business do next?

These issues were examined during a recent RDS Partnership panel discussion featuring RDS Partners David Lee, Kamilah Kasim, Michele Kythe Lim, Rajeswari Karupiah and S. Saravana Kumar where they considered the role of a GC across projects and infrastructure, M&A, corporate governance, employment and tax.

From Legal Gatekeeper To Risk Integrator

The traditional conception of a GC as the person who says whether something can or cannot legally be done is becoming increasingly inadequate. Businesses generally do not approach their legal teams merely to be told that a problem exists. Management wants to understand the consequences of that problem and, more importantly, how it can be solved.

The modern GC operates increasingly as a risk integrator. This means the in-house legal team is expected to not only understand the law but the business itself including the operations, commercial objectives, regulatory environment, people and risk appetite.

This expectation also changes the relationship between a GC and senior management.

An effective GC must be sufficiently close to the business to understand what is happening, while retaining sufficient independence to challenge management when necessary. The GC who becomes involved only after a problem has crystallised may already be too late.

The objective should instead be early identification of emerging risks, followed by an assessment of whether those risks can be accepted, mitigated, transferred or must be avoided altogether.

A Signed Contract Is The Beginning, Not The End

One recurring misconception is that a GC's involvement substantially ends once a contract has been negotiated and signed.

For major projects, the opposite may be true. Construction and infrastructure contracts illustrate the problem particularly clearly. The original agreement may carefully allocate risks between the parties, but the commercial relationship does not remain static.

Scopes change. Deadlines move. Instructions are issued informally. Engineers and quantity surveyors correspond directly with contractors. Operational decisions are made under pressure. Over time, the parties' conduct may begin to diverge from the contractual framework.

The danger is that correspondence or conduct during contract administration may inadvertently waive rights, compromise contractual protections or alter the evidential position that the company thought it had secured when the agreement was signed. The lesson for the GC is that contract management is as important as contract drafting.

Legal teams do not need to administer every operational detail. They should, however, establish mechanisms to identify correspondence, variations, delays, claims and other developments capable of materially affecting the company's contractual position. This is particularly important in technically complex industries. A lawyer advising on an EPCC contract, renewable energy project or major infrastructure development does not need to become an engineer. But the lawyer must understand enough of the technical and commercial context to identify when an engineering or operational decision carries legal consequences.

Curiosity about the business is becoming an essential legal skill.

When The CEO Says: "The Deal Is Done"

The same principle arises in M&A. Legal teams are frequently brought into transactions after key commercial terms have already been agreed. The temptation is either to resist the transaction altogether or simply document what management has decided. Neither approach adequately reflects the modern General Counsel's role. The better approach is to classify the risk.

Some risks can be contained contractually through representations and warranties, conditions precedent, indemnities, escrow arrangements or post-completion obligations.

Others may require management intervention or additional protection, such as insurance, but do not necessarily require the commercial bargain to be reopened.

A third category goes to the heart of the investment thesis and may justify returning to the negotiating table.

Examples include defects in ownership, an inability to obtain or retain a licence essential to the business, material regulatory exposure, illegality, or uncertainty over whether critical intellectual property is actually owned by the target. This distinction matters as legal should not "kill the deal" merely because risk exists. Every transaction involves risk. The General Counsel's role is to distinguish between risk that can be managed and risk that fundamentally undermines the transaction.

Only in the latter category, where the risk cannot realistically be addressed through price, contractual protection, restructuring or another mitigation measure should abandoning the transaction become the appropriate recommendation.

Tax And Regulatory Risk Cannot Be An Afterthought

M&A also demonstrates why legal risk increasingly overlaps with tax and regulatory risk.

An acquisition may appear commercially attractive but carry exposures that are not immediately visible from the transaction documents.

Tax incentives, accumulated losses and unabsorbed allowances may be subject to conditions and may not necessarily survive changes in ownership in the manner assumed by the purchaser.

The same issue arises with regulatory approvals and licences. A licence enjoyed by the target including sector-specific or Customs approvals should not simply be assumed to continue unaffected following the transaction.

This makes multidisciplinary due diligence increasingly important. A GC should therefore ask not only whether the company owns the shares and assets being acquired, but whether the economic assumptions underpinning the acquisition remain valid after taking account of tax, regulatory and licensing consequences.

The broader lesson applies beyond M&A. Compliance obligations such as stamp duty can easily fall between organisational functions, with finance assuming the issue belongs to legal, legal assuming it belongs to finance, and operations believing it belongs to someone else.

Where ownership is unclear, compliance risk increases. A GC is increasingly well placed to identify these organisational gaps and ensure that responsibility is expressly allocated.

Retrenchment: Start With The Job, Not The Number

The pressure to reduce costs presents another area where legal strategy and enterprise risk intersect. With businesses facing higher costs, technological disruption and the growing use of artificial intelligence, management may decide that the company needs to become leaner.

The danger arises when the exercise begins with a predetermined headcount reduction, for example, an instruction that the workforce must be reduced by 10% or 20%. This number should not substitute for the underlying legal and commercial analysis.

The first question should be whether genuine redundancy exists. Which functions have disappeared or diminished? Which positions are no longer required? Is the organisation eliminating jobs or merely selecting employees? What objective criteria will determine who remains? Have alternatives such as redeployment, transfers, voluntary separation, early retirement or reduced hours been considered?

This distinction is critical because redundancy concerns a surplus of employees relative to the work required. It should not become a mechanism for selecting particular individuals under the guise of restructuring.

Selection criteria must similarly be objective, relevant to the needs of the business and consistently applied. Even commonly cited principles such as "last in, first out" should not be treated mechanically. Departures may be justified where the organisation genuinely requires particular technical qualifications, certifications, skills or customer relationships, but the rationale should be identifiable and defensible.

The process matters because an employee whose employment has been terminated may challenge that dismissal under Section 20 of the Industrial Relations Act 1967. The employer must ultimately be capable of establishing the justification for its decision with cogent evidence. For a GC, the lesson is straightforward: do not reverse-engineer the legal process to justify a number management has already selected.

When The Allegation Reaches The CEO

A GC's independence becomes particularly important when allegations concern senior management. For instance, a whistleblower complaint involving the Chief Executive Officer presents an obvious conflict. In such circumstances, the matter should ordinarily be escalated beyond the executive management structure to the appropriate board-level body, such as the audit committee or another relevant board committee. Independent external counsel may also be necessary. This is not merely because the internal legal team is incapable of investigating the issue. The integrity of the investigation itself must be protected.

Where the GC reports to the CEO, serves as company secretary or is otherwise closely involved in the company's governance processes, an independent investigation may provide the separation necessary to preserve confidence in the process.

The GC must remain independent, avoid premature conclusions and ensure that allegations are properly investigated before recommendations are made.

Boards Need Early Warning, Not Historical Reporting

The evolving role of a GC also has implications for the board. Boards generally derive limited value from being told about a problem only after it has become a dispute, regulatory investigation or reputational crisis. They need early warning. This requires the General Counsel to identify leading indicators rather than merely report historical outcomes.

A deteriorating workplace culture, repeated employee complaints, unusual contractual correspondence, compliance gaps, unresolved audit issues or emerging regulatory concerns may each appear manageable in isolation. Collectively, however, they may signal a much larger enterprise risk. A GC is particularly well positioned to connect these dots because legal frequently sees issues across multiple parts of the company.

The objective is not to overwhelm the board with every legal development. It is to identify those matters that could materially affect the business and ensure that decision-makers are sufficiently informed before the risk becomes a crisis.

AI Changes The Tools, Not The Accountability

Artificial intelligence (AI) adds another dimension to a GC's expanding mandate. AI can improve efficiency, reduce repetitive work and assist legal teams in processing large volumes of information. But greater technological capability does not remove the need for human judgment.

AI systems can produce incorrect or incomplete outputs. More fundamentally, they do not bear responsibility for the decisions ultimately taken by the company. Accountability remains with management, the board and the professionals advising them.

For a GC, AI should be regarded as a tool that can enhance legal capability rather than a substitute for professional judgment. The more technology accelerates the production of information and analysis, the more valuable the GC's ability to assess context, exercise judgment and understand the underlying business becomes.

Measuring The General Counsel's Value

There is an inherent difficulty in measuring the performance of an effective legal function.

The absence of regulatory penalties, major litigation or catastrophic contractual disputes may indicate excellent risk management but it may equally be regarded internally as simply what legal was expected to achieve
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Traditional lagging indicators therefore provide an incomplete picture. Companies may benefit from considering leading indicators: how quickly legal becomes involved in material transactions, whether business divisions regard legal as commercially useful, the effectiveness of internal risk escalation, contract-management discipline, stakeholder satisfaction and whether emerging issues are identified before they become disputes.

Internal customer-satisfaction assessments may provide one method of measuring whether legal is genuinely adding value to the wider organisation.

Ultimately, however, the strongest measure may be whether the GC is regarded not merely as the person to call when something has gone wrong but as someone management wants at the table before the decision is made.

The General Counsel As Enterprise Adviser

The modern GC sits in an increasingly difficult position. A GC must understand management's commercial objectives without becoming captive to them; identify legal risk without unnecessarily obstructing the business; challenge senior management while remaining a trusted adviser; understand technical and operational issues without pretending to be the engineer, accountant or tax specialist; and know when a manageable risk has crossed the line into one that should not be taken.

This requires more than legal knowledge. It requires commercial judgment, independence, curiosity and an understanding of how seemingly separate risks interact across an enterprise. The GC of the future will therefore not be defined simply by how well he or she answers legal questions. The greater value lies in seeing the problem before it becomes a legal problem, connecting risks that others may see only in isolation, and helping the organisation make better decisions before those risks become crises.

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