



*cutting through complexity*

# Beyond the Law

KPMG's global study of  
how General Counsel are  
turning risk to advantage

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IN A VERY CHALLENGING BUSINESS WORLD, GENERAL COUNSEL (GC) ARE BEING CALLED UPON TO PLAY A GREATER ROLE IN THE RUNNING OF COMPANIES, PARTICULARLY IN THE MANAGEMENT OF RISK. BUT THERE IS A GAP BETWEEN THE BENEFICIAL IMPACT GC'S CAN HAVE AND THEIR ACTUAL INVOLVEMENT IN STRATEGIC DECISION-MAKING, ACCORDING TO A SURVEY OF 320 CORPORATE COUNSEL AROUND THE WORLD, CONDUCTED ON BEHALF OF KPMG BETWEEN APRIL AND MAY 2012. BY USING THEIR UNIQUE SKILLS AND APPROACH TO BUSINESS, THE INFLUENCE OF GC IN THE C-SUITE IS GROWING, BUT THE JOURNEY IS FAR FROM OVER. GOVERNANCE, PROCESSES, AND ATTITUDES WILL NEED TO CHANGE ON ALL SIDES.

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THE GOAL OF KPMG'S FIRST GLOBAL SURVEY OF GC WAS TO FIND OUT HOW MUCH PROGRESS GC ARE MAKING AS BUSINESS DECISION-MAKERS AND THE CHALLENGES THEY FACE IN THIS GROWING ROLE. INTERVIEWS WERE CONDUCTED IN 32 COUNTRIES ACROSS REGIONS AND INDUSTRIES, IN BOTH MATURE AND HIGH GROWTH ECONOMIES.

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## COMMERCIAL DECISION-MAKING

According to the survey, GC firmly believe that the involvement of General Counsel in the commercial decision-making process helps to reduce the number of disputes and regulatory issues companies face. Seventy-nine percent agreed with this view. But when GC were asked if they are now more involved with the formulation of business strategy than five years ago, only 67 percent said they are. The gap suggests that GC are making significant progress in playing a bigger role in their companies, but they still have some way to go to realise their full potential as business leaders.

### There were significant regional differences in the results:

In mature markets such as Europe, North America and Asia Pacific the percentages were 88 percent and 72 percent respectively. This contrasted with high growth markets which recorded responses of 64 percent and 58 percent respectively. This reflects the more traditional role that GC have in the high growth markets but their role too is changing. It also shows that there is a big gap between perceived benefits of involving GC in business strategy and their actual involvement.

## SEAT AT THE TABLE

One way of influencing business decisions is to have a seat at the table with leadership, but only 38 percent of the global respondents said the GC sits on the Board. However, 43 percent said the GC reported directly to the Board and 19 percent reported via a board member. Where GC have already won this influence, they have learned to present their legal and regulatory knowledge in powerful, practical commercial language that Boards recognise and appreciate. Moreover, GC bring a different perspective, which complements the skills of others who advise senior decision-makers.

## RISK ASSESSMENT

A crucial area where corporate counsel adds value to the organisation is in assessing risk. In the view of survey respondents, the strongest risk to organisations in the next five years is an expected increase in the volume and complexity of regulation. It is here where the influence of the GC is unrivalled. Respondents say that the legal function has primary responsibility for handling regulatory compliance and regulatory investigation. The compliance function is cited about half as frequently, with Finance and Risk far behind. Nevertheless, the risks companies face need to be placed in the context of the business, and this is a challenge for corporate counsel. Being able to translate complicated legal issues into the more commercial, solutions-focussed language that business leaders can relate to is a skill that will do much to enhance GC senior-level influence.





79%

of GC believe that their involvement in commercial decisions reduces corporate risk

62%

of GC said that they did not sit on the Board



29%

of GC are proactively identifying risks at an early stage as one of their top 3 tasks

67%

said they were now more involved with the formulation of business strategy than five years ago

GC would improve their standing within the company if they can anticipate what the regulatory landscape might look like tomorrow. But only 29 percent of respondents globally had proactively identifying risks at an early stage as one of their top 3 tasks. By contrast, North American respondents gave it a higher priority, with 41 percent saying it was a key step in risk management. Worldwide, 69 percent of respondents said the most important tactic was to train the in-house legal team on developments in legislation.

## COLLABORATION WITH BUSINESS OPERATIONS

Looking forwards rather than backwards is vital: but, to make their voices heard, GC must also collaborate effectively with other parts of the business. In the survey, GC indicated that to address the risks they face, it is necessary to develop close working relationships with other parts of the organisation. The top three functions cited were Finance (61 percent of respondents), Internal Audit (59 percent), and Sales and Marketing (55 percent). Asked which parts of the organisation they worked most closely with at present, respondents highlighted the same three functions. These findings suggest GC are focused on governance and compliance as well as revenue risks, more than supply side issues and cost control.

## FUTURE REGULATORY LANDSCAPE

When asked to predict what types of laws were a serious concern to the business over the next five years, most respondents cited legislation covering competition and anti-trust matters (39 percent), followed by laws protecting consumers (34 percent) and anti-bribery and corruption laws (32 percent). Twice as many Western European, compared to North American, respondents cited competition rules as serious concern. Among the issues handled by the in-house team, the number of regulatory and competition/anti-trust disputes is expected to increase the most worldwide, over the next five years. Securities-related disputes and professional negligence cases are expected to increase the least.

Legal disputes will not only become more numerous, but also more difficult to resolve, over the next five years. The complexity of subject matter and the volume of information disclosed as part of the dispute will also significantly increase, as well as the number of cases resolved through arbitration, litigation, and mediation.

## CONCLUSION

The growing regulatory demands on businesses around the world will lead the Board and senior executives to rely increasingly on their in-house legal team for proactive advice. The most effective GC will be those who can predict potential problems, explain the risks and weigh them against the opportunities, blending legal and business knowledge.

Global businesses face the same global challenges so the firms that fare best will be those able to turn adversity to their advantage. GC are well-positioned to help navigate the wisest course.

# WAYPOINTS FOR GENERAL COUNSEL

ENGAGE DIRECTLY WITH THE SENIOR DECISION-MAKERS IN YOUR ORGANISATION	
ANALYSE PAST INCIDENTS TO ANTICIPATE FUTURE RISKS	
COMMUNICATE WITH SENIOR DECISION-MAKERS IN THE COMMERCIAL LANGUAGE THEY USE	
PUT YOUR ADVICE SQUARELY IN THE COMMERCIAL CONTEXT	
BE ADAPTABLE IN RESPONDING TO DIFFERENT REGULATORY ENVIRONMENTS	
WORK CLOSELY TOGETHER WITH ALL THOSE DEALING WITH THE RISK AND GOVERNANCE AGENDA	
TAKE THE TIME TO REALLY UNDERSTAND THE BUSINESS AND ITS RISK APPETITE	
PUT DISPUTE AVOIDANCE BEFORE DISPUTE RESOLUTION	
WORK WITH COMMERCIAL COLLEAGUES TO PROTECT RELATIONSHIPS	
BE FLEXIBLE IN DISPUTE RESOLUTION STRATEGIES	
TREAT THE RESOLUTION OF DISPUTES LIKE ANY OTHER STRATEGIC DECISION	
DON'T UNDER-ESTIMATE THE IMPACT CULTURAL DIFFERENCES CAN HAVE	
STAY UP TO DATE WITH THE WAYS YOUR BUSINESS USES NEW TECHNOLOGIES	
BUILD RELATIONSHIPS ACROSS THE BUSINESS AND WORK COLLABORATIVELY	
SPEND TIME EMBEDDED IN THE OTHER PARTS OF THE BUSINESS	

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