

# IN-HOUSE LAWYERS AS STRATEGIC CORPORATE ADVISERS

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**The remit of general counsel is expanding to encompass more than mere legal advice to emerge as a major strategic corporate role, says Milton C. Regan of Georgetown Law School**

A medida que las empresas se enfrentan a nuevos retos financieros, regulatorios y de competencia a nivel mundial, los abogados de empresa tienen que asumir una serie de responsabilidades que van más allá del asesoramiento jurídico técnico. La tendencia es aun más pronunciada en las grandes multinacionales. Según Milton C. Regan, de la Universidad de Georgetown, cada vez más las empresas recurren a sus abogados internos para un mayor número de asuntos.

As companies confront increasing competitive, financial, and regulatory challenges on a global scale, general counsel are assuming a broader range of responsibilities that go beyond providing technical legal advice. The trend is more pronounced in the US and the UK, and in larger companies with a global footprint. Nonetheless, events are likely to lead more and more companies around the world to look to their inside counsel for guidance on an expanding set of issues.

We can identify four roles that seem to be emerging as part of the general counsel's portfolio. The first two are familiar and more traditional, but the skills necessary to perform them are becoming more complex. The next two reflect involvement in corporate operations and strategy that call for capabilities that go well beyond what lawyers usually learn in law school.

First, counsel are responsible for legal compliance. This is a familiar role that draws on traditional legal skills. A mounting body of research, however, suggests that an effective compliance programme must be sensitive to insights from organisational behaviour, social psychology, and systems design. The most successful programmes appear to strike a balance between monitoring behaviour and granting employees discretion, and to take account of feedback loops throughout the organisation. Lawyers concerned with legal compliance increasingly need to be familiar with these dynamics. In addition, they must be sensitive to what types of corporate governance structures ensure that the right people get the right information to prevent, detect, and penalise violations of law.

Second, inside counsel collaborate with outside providers to provide legal services to the company. This also is a familiar role, but its contours have changed significantly in recent years. Counsel must be attentive to how work can be disaggregated (unbundled) into discrete activities that are delegated to least-cost providers – and to the need to co-ordinate these activities so that they can be recombined smoothly. This involves constructing a supply chain that may include multiple providers, which makes project management an important skill. It also involves working with outside providers to create a shared knowledge management system that enables lawyers and managers to work more efficiently by drawing on “distributed knowledge” spread across a large number of individuals and organisations.

Third, many general counsel are moving beyond a focus on legal compliance to assume responsibility for enterprise risk management. This requires intimate knowledge of the company's operations, which may involve diverse lines of business. It requires sensitivity to concerns such as how events are likely to affect the company's reputation, how competitors and investors are likely to react, and more concrete consequences that may require reliance on environmental science and financial modelling. Here again, a lawyer must be attentive to how best to allocate authority within the corporation so that information on risk is in the hands of those people who can best monitor, analyse, and respond to it.

Finally, general counsel are beginning to assume a seat at the table during discussions of corporate strategy. In the 2011 Deloitte Global Corporate Counsel Report, two-thirds of counsel surveyed indicated that the in-house counsel is now a member of the senior management executive team, compared to 47 percent five years ago. One reason is that those discussions increasingly involve concerns about legal compliance. More important, however, is the fact that counsel who are familiar with the company's operations and the risks that it faces are in a position to help advise on the long-term direction of the firm, and on how to align diverse functions and activities so that they further the company's strategy.

The 2011 Deloitte Report concludes that "corporate counsel have a wider set of responsibilities than five years ago, especially in regulatory compliance, risk management, and ethics".

The continental European conception of the general counsel has tended to be narrower than the emerging role that I have described. As companies face a more dynamic and uncertain environment in a global economy, however, it is likely that this conception is likely to expand.

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