

THE GENERAL COUNSEL AS NEWCOMER IN THE EXECUTIVE SUITE: WHAT CAN GO WRONG?

Posted on 16/08/2012



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When facing a crisis, there are some clear do's and don't's for General Counsel, says Werner

Con un panorama regulatorio cambiante, el área de gobierno corporativo se ha convertido en una parte significativa de la función del Secretario General. Su rol no es solo el de ser un asesor cercano y de confianza para el Director General, sino que además se le exige ser una fuente de sabiduría y apoyo para la Junta Directiva.

An evolution has taken place over the last decade and a variety of forces and events have made the role of General Counsel more prominent than ever.

In an ever-changing corporate, regulatory and global landscape, corporate governance has become a significant part of the General Counsel's role. The General Counsel is not only a close and trusted adviser to the CEO, but increasingly a source of wisdom and support to the Board of Directors as well. Unfortunately for some, managing corporate crisis has also become part of daily life.

The impact of these changes on the General Counsel's new and dual role means that the General Counsel must be a business partner while acting as the guardian of corporate integrity, answer directly to the Board while working closely with the CEO on a daily basis, and be able to say 'no' to the others on the executive team without being perceived as the 'business frustration department'. This is no easy task.

Today's General Counsel has earned his (or, increasingly, her) place in the executive suite and his or her appearance, with picture, in the company's annual report next to those of the Chairman, the CEO and other senior executive officers.

So far, so good. But what if corporate disaster strikes and things go terribly wrong? What happens when, soon after signing, a highly publicised new joint venture disintegrates into financial turmoil, or when a divestiture goes awry and the company gets sued in bankruptcy proceedings all over the globe? Or when, despite the assurances of trusted outside counsel to the contrary, the company loses all important patent litigation and proprietary technology is snapped away by competition? There is no escaping the harsh reality that together with a say in strategic decision-making comes accountability, and that having a visible presence in the executive suite means having to participate in corporate politics. The mix of these two can make for an explosive cocktail that can be difficult for a straightforward, trusted and upright General Counsel. No wonder, then, that turnover among General Counsels at large companies, hitherto largely nonexistent, has increased significantly. All of this is a far cry from the perceived comfort and tranquillity of the position of the 'kept lawyer' of the previous decades.

Forewarned is forearmed, as the saying goes, and there are some do's and don't's for General Counsels when dealing with the fallout of a legal disaster. A General Counsel, like any other member of management, should proceed on the following three assumptions in times of corporate crisis. First, an organisation will always react to a problem, any problem, by looking for a personal failure of some sort and, by definition, for a scapegoat to put the blame on. Second, management may make mistakes, but a Board never does. Third, and most importantly, it can be very lonely at the top. When crisis hits, the Board will ask questions. The Board will question the CEO and the CEO almost certainly will defer to the General Counsel. In general: "What went wrong? How is this possible?" On process: "We were not informed," or worse "Management has not given us full or adequate information". On result and cost: "But you told us that this would work and we have given you all support to make this work". On the role and quality of outside counsel: "Did we have the right firm?" Inevitably, someone will have told a Board member that another law firm allegedly was better qualified and should have been used.

As in many instances in corporate life, no readymade solution exists and each crisis will have its own dynamic and will require a succinct approach. But wisdom, transparency and above all, integrity will serve a General Counsel best at all times.

At the end of the day, General Counsel of the present era, even if they may have to take the blame and resign like their colleagues in the executive suite, can at least take some solace in the

accomplishment of having risen to a position on the corporate ladder that, in consultants' speak, is no longer 'nice to have', but is now 'essential'.

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