

# THE GENERAL COUNSEL ROLE: MANAGING GLOBAL OPERATIONS AND M&A ACTIVITY

The role of general counsel continues to evolve. GCs are no longer siloed within an organization and expected to handle only legal matters. Instead, GCs are increasingly stepping into several roles, specifically business strategy, risk management and process improvement. As these roles expand, GCs should continue to build effective relationships with outside counsel, particularly in the M&A space.

"GC's current role necessitates working with management to shape business strategy from a legal perspective," says Greg Kaden, Director at Goulston & Storrs. "In the future, there will likely be continued emphasis on GC's role as business advisors, and potentially, GCs may have a greater presence on boards of directors."

GCs, as both legal and business advisors, are integral to their organization's global expansions and M&A activity. Yet, in-house legal professionals admit to having many concerns in handling M&A transactions in-house. These worries highlight the need to hire experienced outside counsel for an efficient and successful M&A transaction.

Through Goulston & Storrs' survey, *The Role of General Counsel in Managing Global Operations and M&A Activity*, conducted by ALM Media, in-house counsel and other legal professionals were asked about the evolving role of GCs and the use of outside counsel during M&A transactions. In this whitepaper, we will explore:

- ✓ The current and evolving role of GCs
- ✓ GC's role in M&A activity
- ✓ How outside counsel address GC's challenges during M&A transactions
- ✓ Hiring and managing outside counsel

## THE EVOLVING ROLE OF GENERAL COUNSEL

### Today's Expectations of GCs

In recent years, GCs have increasingly become business strategists as well as legal advisors. A majority of survey respondents believe that the role of in-house counsel has changed. Today it is widely recognized that GCs must serve as business strategists in connection with any expansion of their organization's operations.

Ninety-one percent of respondents agree that in-house counsel are now expected not only to handle legal matters, but also to serve as business strategists in growing the global operations of their companies.

In regard to business strategy, “GCs are expected to act as trusted advisors to their organization’s management team,” according to Kaden. Several findings of the survey support the notion that GCs play an advisory and leadership role. Almost 57 percent of respondents believe it is very important for GCs to lead business strategy by providing insightful advice to senior executives. More than 70 percent believe GCs must reinforce corporate culture by setting a tone of trust at the top, and 67 percent believe that the GC’s role requires them to adeptly handle communications with key stakeholders.

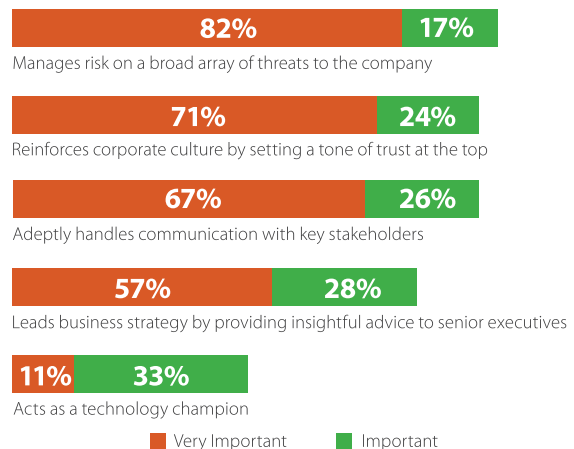


That being said, a greater focus on business strategy is hardly the only evolution in the GCs role. Identifying and managing risk is also a top priority. The survey found a little more than 84 percent of respondents believe regulatory compliance is a top risk GCs should focus on, and almost 54 percent believe corporate reputational risk is a top concern. Additionally, close to 82 percent believe it is very important for GCs to assume the responsibility of managing risk and addressing a broad array of global threats to the company.

Technology continues to rise in importance as well. Companies want to understand technological developments to help them identify and mitigate risk, maintain regulatory compliance and become more efficient. Nearly 83 percent of survey respondents believe it is at least somewhat important to assume the responsibility of acting as a technology champion.

The expectations for GCs do not end there. While the role of the GC is evolving, GCs are not expected to fly solo on all legal matters. Outside legal advisors are essential, particularly in regard to M&A activity. GCs are expected to coordinate and manage outside counsel, as well as to scrutinize outside counsel’s legal fees to ensure they remain in budget and are an appropriate expense for the organization.

## Responsibilities considered important to the role of GC



## Tomorrow’s Expectations of GCs

The GC’s role is not fixed. It is expected to continue to expand and shift priorities over time. There will be an increased emphasis on technological awareness and expertise as well as process efficiency. This makes sense given the significant expansion in Big Data and AI technology in recent years. GCs need to recognize technology as a potential resource for their companies.

At the same time, survey respondents quite correctly believe that cyber risk is a top risk in-house counsel needs to focus on. GCs need to be aware of the risks associated with technology, such as cyber vulnerabilities and attacks.

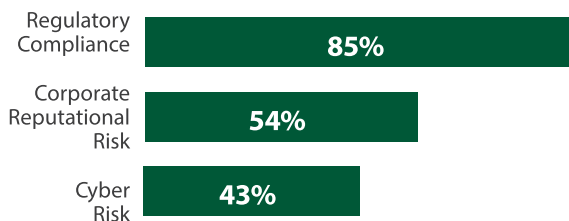
Additionally, GCs should not expect their role as business strategist to diminish anytime soon. Organizations will continue to prioritize GC’s role in this regard, and in-house counsel may have greater influence on the direction companies take, accordingly.

## CONCERNS IN MANAGING M&A ACTIVITY IN-HOUSE

Over half of respondents stated that their organizations completed an M&A transaction in the last three years and just over 43 percent of respondents said their organization anticipates completing an M&A transaction in the next three years.

## Top risks on which GC are expected to focus

The survey responses reflected these concerns:



An M&A transaction is a significant undertaking for any organization. Not surprisingly, GCs face a variety of concerns and challenges when handling a M&A transaction in house.

One of the greatest challenges of handling M&A transactions is a lack of time. GCs have a full workload as it is. A new, significant transaction would stretch a GC's already limited availability.

- ✓ 43 percent of GCs said their greatest concern was a lack of in-house legal resources to handle the additional workload.
- ✓ 51 percent of the organizations planning an M&A transaction in the near future believe they do not have sufficient in-house resources for the activity.

Another major concern is a lack of multi-disciplinary expertise. Many GCs do not have the experience and market knowledge to handle the particularities of an M&A transaction.

Many GCs lack experience managing multi-jurisdictional transactional issues. As companies expand global operations and enter into M&A transactions, in-house attorneys face the challenge of remaining compliant with complex and ever-changing regulations, and navigating significant cultural differences. Maintaining a sufficient level of communication with attorneys and key stakeholders in other geographic areas is also a typical challenge.

Companies seeking to handle a M&A transaction in-house also face technological limitations, such as a lack of AI

diligence tools. Many in-house teams do not have the technology to efficiently handle the complexities and compliance risks of an M&A transaction.

Post-closing integration introduces further challenges. Following a buy-side acquisition, GCs are concerned with ensuring uniform implementation of corporate and legal policies and ensuring a smooth integration of the target into the organization's enterprise post-closing. Nearly 31 percent of survey respondents stated that one of their greatest concerns is integrating and educating newly acquired clients regarding company policies.

In sum, GC's concerns and challenges in handling an M&A transaction in house include:

- ✓ Lack of time
- ✓ Lack of expertise in regard to M&A transactions
- ✓ Lack of experience managing multi-jurisdictional issues
- ✓ Lack of technology
- ✓ Ensuring uniform implementation
- ✓ Ensuring smooth integration

## Outside Counsel Address GCs' Concerns

GCs can address their concerns in the M&A space by hiring outside counsel. Forty-three percent of GCs were worried about the additional workload in handling an M&A transaction. Hiring outside counsel would not only bring more hands on deck, but many firms also have the ability to scale up for projects that require additional manpower.

Hiring an M&A law firm also facilitates the handling of multi-jurisdictional issues. A full-service firm typically has a wide range of M&A professionals and subject matter experts. These professionals offer the knowledge, training and insights necessary to handle the complexities of an M&A transaction, including those involving different nation's regulatory schemes.

Outside law firms are becoming much more technologically savvy and more focused on process management. Technological tools and resources that enable these firms to conduct more efficient M&A transactions and better mitigate compliance and cybersecurity risks. By hiring an outside firm, GCs can benefit from the technology and processes they lack in house.

By providing time, attention, expertise and resources to an M&A transaction, outside counsel free up GC's time and attention, which can then be devoted to smoothly integrating the target organization into their own and implementing company policies.



of respondents stated their organizations anticipate completing an M&A transaction in the next three years as part of their growth strategy

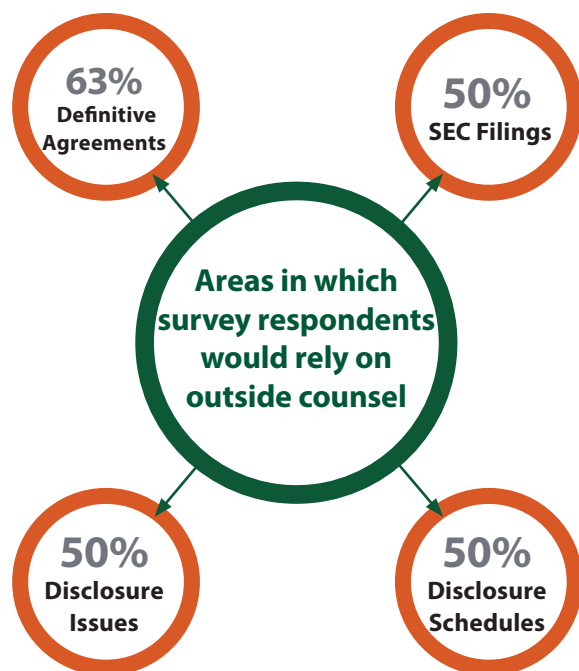


of organizations planning an M&A transaction in the near future believe they do not have sufficient in-house resources for the activity

## Survey respondents agree on the assistance outside counsel can provide

Ninety percent of the businesses that completed an M&A transaction in the past three years hired outside counsel to assist them.

Some of the areas in which survey respondents said they would rely on outside counsel's expertise include:



## Effectively Managing the Outside Counsel Relationship

For GCs and their companies to fully benefit from hiring an outside firm, GCs need to hire the right firm. They also need to effectively manage the relationship and budget, as one of GC's top concerns during an M&A transaction is to manage outside legal spend.

Finding the right firm for the transaction is a source of anxiety. Thirty-one percent of GCs said their greatest concern was selecting outside legal advisors with deep expertise in deal negotiation and execution as well as knowledge of their industry.

When hiring outside counsel, GCs should look for:

- ✓ Strong experience and expertise
- ✓ A collaborative and use-friendly approach
- ✓ Responsiveness
- ✓ A commitment to process efficiency
- ✓ A willingness to collaborate on fee arrangements
- ✓ A flexible, responsible approach to fees and billing

Finding the right outside law firm for an organization is the first step in managing a successful partnership. Following the decision to engage outside counsel, GCs should carefully manage the relationship in order to benefit from a smooth and efficient M&A process.

For GCs to get the most out of hiring outside counsel for a M&A transaction:

- ✓ Hold a meeting at the outset of the transaction to discuss the GCs and company's expectations, parameters of the transaction, budgetary issues, possible hurdles, top concerns, etc.
- ✓ Follow up with regularly scheduled updates to discuss the transaction status, any recent or potential issues and the budget.
- ✓ Always provide clear expectations in regard to the management of the transaction and billing.

**For more information on forward-looking strategies to ensure a successful M&A transaction and manage the evolving role of the GC, visit [goulstonstorr.com](http://goulstonstorr.com) or contact:**

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