

LEVERAGING THE GC:

How the Right General Counsel Can Enhance Board Oversight



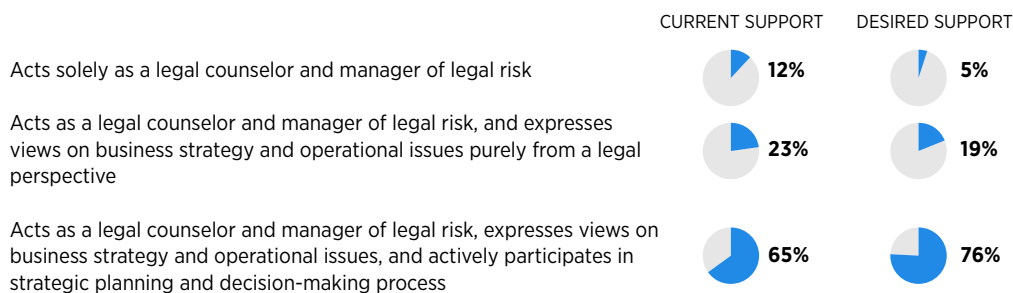
Like many key roles in the C-Suite, the role of the general counsel has been elevated in the past decade, from purveyor of legal advice to one of strategic counsel. With the proliferation of risks today, the GC plays a crucial role in providing the board with the information they need to fulfill their duty of care. Yet, a recent survey of 226 public company board members conducted by Corporate Board Member and BarkerGilmore reveals gaps in how boards are utilizing their GC in their risk oversight.

IN 2016, research conducted by *Corporate Board Member* and BarkerGilmore found that increasingly, the general counsel's primary role was expanding beyond that of safeguarding the organization against legal and ethical transgressions to include strategic advisory responsibilities. At the time, [79 percent of corporate directors surveyed](#) predicted that as early as 2020, one of the GC's most valuable functions would be to advise the board and executive team on business strategy.

The prediction proved apt. Three-quarters of directors participating in the January 2022 study on the GC's value for boards reiterated that directors would like their general counsel to express views on business strategy and actively participate in strategic planning, in addition to their core responsibilities as legal counselor and manager of legal risk. This is particularly true at larger organizations, where 87 percent of directors at companies with \$10B+ in market capitalization say they tend to seek out a more strategic perspective from their GC, compared to 61 percent among those at companies with less than \$500M in market cap.

“The GC these days needs to be much more than a lawyer. They need to function as the backbone of the organization.”
—Board Member, Survey Participant

Desired Level of Support from General Counsel

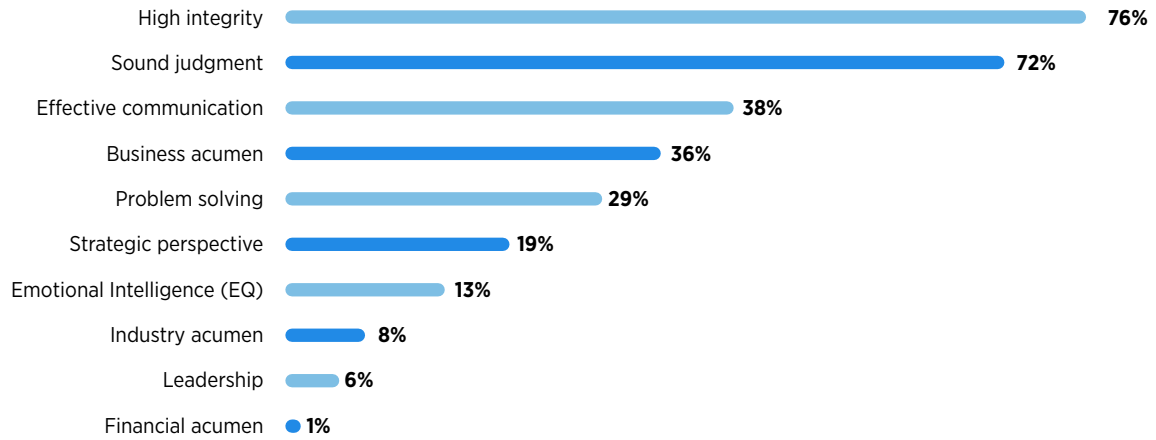


The thinking reflects growing acknowledgement that today's business environment is rife with risks that have the potential to disrupt operations and derail growth. Regulatory changes, Environmental, Social and Governance (ESG) pressure, stakeholder activism, workforce disruption, privacy concerns, economic and geopolitical upheaval are all areas where directors are looking to the general counsel to provide sound business counsel in addition to legal advice—to both the board and the CEO.

Yet, the survey finds a significant disconnect.

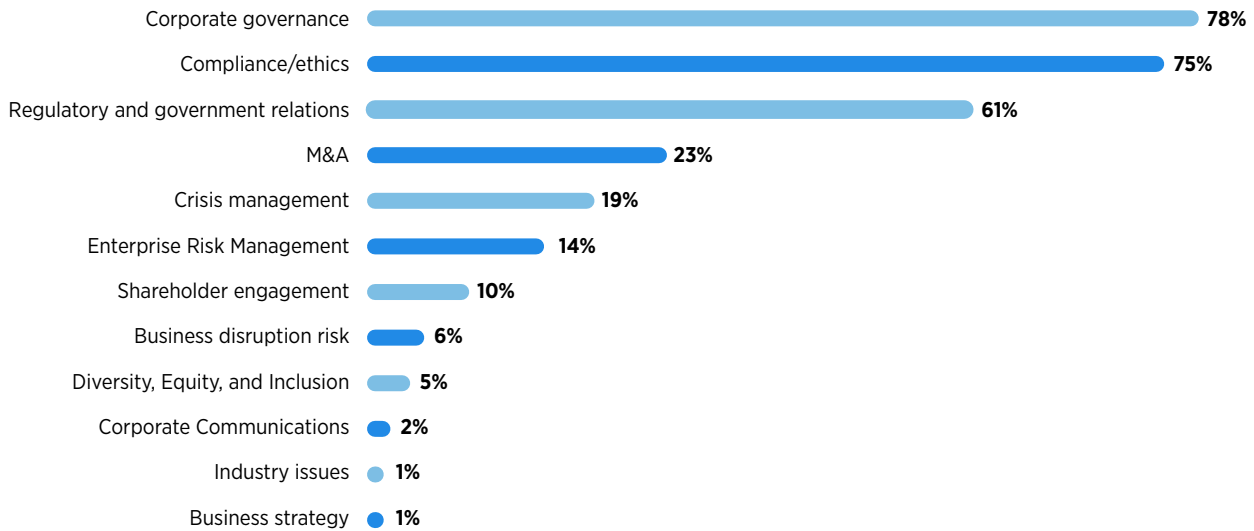
When assessing a GC candidate's profile, only 19 percent of directors rated strategic perspective as one of the top competencies to possess. The most important competencies were high integrity (76 percent) and sound judgement (72 percent), the same top two criteria cited in the 2016 study. In fact, when board members were asked to rank the areas where the general counsel's contributions are most valuable to directors, business strategy ranked the lowest, with only 1 percent of the votes.

Competencies Most Important for a Strategic GC to Possess



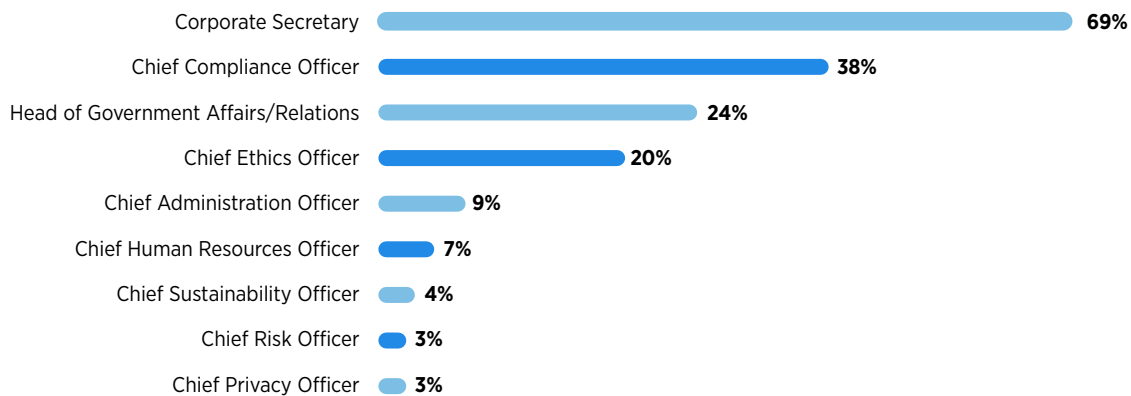
**Directors were asked to select Top 3*

Areas Where Boards Find the GC's Contributions Most Useful



**Directors were asked to select up to 3*

Other Capacities Served by the GC



What's more, when asked across which areas of risk the GC's perspective is most valuable to boards, the response was overwhelmingly skewed toward traditional legal counsel responsibilities: litigation (96 percent), investigations (89 percent) and regulatory matters (84 percent) topped the list by large margins. New risks, such as Covid-related mandates, work arrangements, workplace safety, and even contingency planning and cybersecurity, all ranked low on the list, with less than a quarter of the votes.

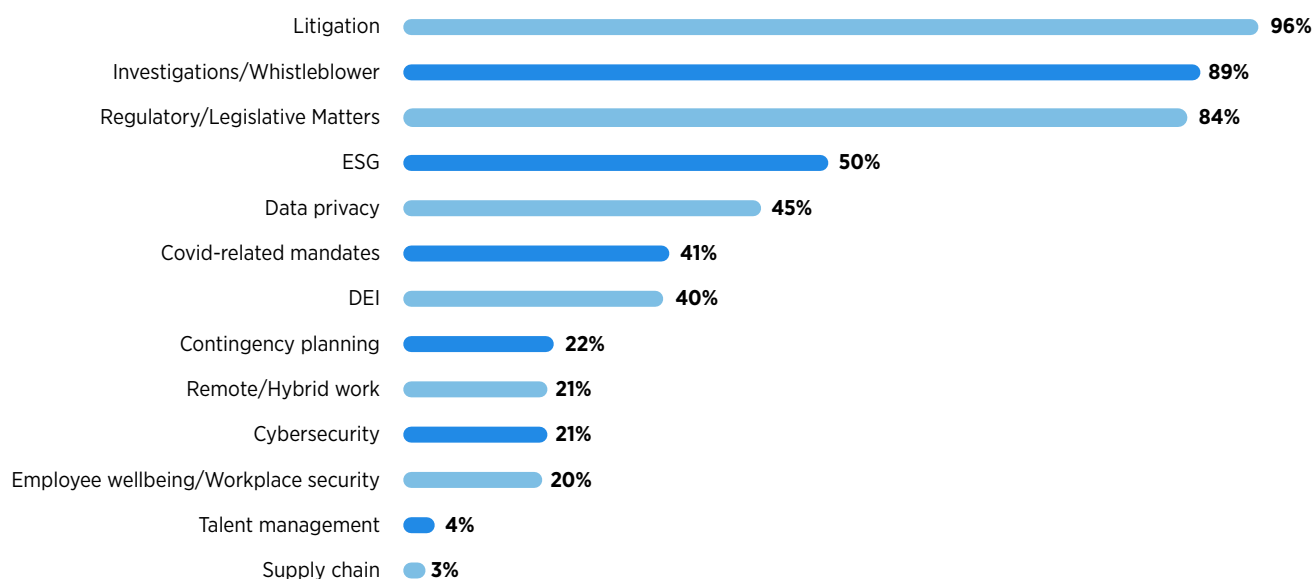
Companies understandably demand rigid legal prerequisites for their general counsel. Experience enduring the challenge of a GC lacking necessary skills, consequences suffered from regulators, reputational damage resulting from internal investigations or litigation, or lost opportunity from IP are all reasons that can drive this stringency. In highly regulated industries, candidates may even be required to possess hands-on experience.

But cultural fit, diversity and soft skills, which cannot be found on a resume, are equally important. The GC's role is critical and requires excellence. While one wrong answer during the interview process can lead to immediate disqualification, even a red flag demonstrating a lack of judgment or ethics discovered during the background investigation after an offer is made can lead to a retraction.

Getting to the finish line in the search for the ideal general counsel is a challenge, but the payoff is worth every bit of the arduous process.

“As board members we have had the opportunity to evaluate other situations. Sometimes the CEO may not fully appreciate what is needed if he/she has not benefited from a good GC previously.”
— Board Member, Survey Participant

Most Valued Areas by Boards for GC's insights



The low proportions for issues such as supply chain, talent and several other workforce-related matters may stem from the fact that a number of directors participating in the study said they did not expect the GC to guide the board on all risk issues, preferring to defer to the appropriate C-Suite member. Yet, with the emergence of new risks that have the potential to cause serious harm and bring about significant litigation and liability, from corporate misbehavior to changes in the regulatory landscape to ESG pressure from shareholders to Covid-related mandates, GCs should have a proactive role in all of those discussions, informing boards of potential risks and liabilities associated with certain business decisions.

THE BOARD'S ROLE IN APPOINTING THE GC

The responsibility—and process—of onboarding a new GC has long been relinquished to the CEO. With time, however, the practice is evolving to include board participation. According to the survey, 73 percent of directors believe the board should be involved in the appointment of the GC, and 93 percent say the process should entail benchmarking internal candidates with an external search.

Adding the general counsel's voice to any strategy conversation only helps to strengthen directors' duty of care argument should something go wrong. Case in point, 86 percent of directors say the GC routinely attends nom/gov committee meetings, and 79 percent for audit committee meetings—that proportion is slightly lower, at 59 percent, for compensation committee meetings.

These findings demonstrate that most boards do expect the GC to contribute to the oversight conversation. It, therefore, only serves directors well to ensure that this individual possesses the skills and depth of knowledge required to add value for the board.

“In many ways, the general counsel is the most important interface, other than the CEO, that board members have, so I think board members should have input into that personnel decision.”

**— Board Member,
Survey Participant**

Board Committee Meetings the GC Routinely Attends and Presents To

	ATTEND	PRESENT TO
Nominating and Governance	86%	52%
Audit	79%	32%
Compensation	59%	11%
Risk	46%	25%
Finance	30%	4%
Technology	13%	1%
None	2%	3%

Yet, the appointment of a new GC seems to fall squarely on the CEO. While 73 percent of directors surveyed said they believe the board should be involved in the process, approximately half say it's ultimately the CEO's decision. The general sentiment gathered from the survey shows alignment among board members that the chair, or lead director, or the nom/gov committee should be given the opportunity to review the final candidate and provide guidance, but that as with any other C-Suite officer, it is not the board's role to select the GC.

Others argue that the choice of a general counsel has significant impact on the organization and that, for that reason, the board should be heavily involved in selecting the best individual to advise both the CEO and the board. “The GC is an important senior position in every public company with which I have been involved, and the board would always be involved in the selection and appointment of someone in that position,” said one director in the study.

“The GC is a critical part of the exec team and has to have a relationship with the board. The GC almost has a dotted line to the board and can be a source of independent advice to the BOD,” read another response, echoing the sentiment that the board chair or the chair of the governance committee should ensure the GC is unbiased and can provide the board with the insights they need.

GC Onboarding Best Practices



Should the Board Be Involved?



Perhaps a challenge in splitting the responsibility between the board and the CEO is the importance of the search criteria. BarkerGilmore has conducted many surveys of CEOs and board members investigating the expectations for the general counsel. The insight from these stakeholders consistently demonstrates differing priorities. Where board members prioritize corporate governance and ensuring fiduciary responsibility, the CEO places emphasis on a leader's ability to serve as a strategic advisor, helping navigate risk across the enterprise while achieving business goals.

During the search process for a new general counsel, these different priorities are, therefore, important to keep in mind so candidates can represent skills and experiences accordingly. The board values and recognizes the importance of soft skills, such as impeccable character, communication skills, leadership abilities and grace under pressure but expects these skills to have been evaluated and confirmed by the CEO and members of the ELT throughout the interview process. Upon reaching a final round meeting with the board, the emphasis is placed on the candidate's awareness of corporate structure and ability to support good governance.

WHERE TO NEXT?

The survey reveals great opportunities for boards and their GCs to improve on their relationship and expand their contributions beyond the issues of corporate governance, compliance, ethics and regulatory compliance. Deep knowledge of corporate laws and regulations are inevitably top of mind when choosing a general counsel—and unsurprisingly topping the list of skills and attributes most important for the job, according to directors. But for boards to derive added value from their GC, and, more specifically, the strategic insights they seek from the role, the focus may need to change.

GCs are no longer the nay-sayers of the company. They have not only evolved in their role but also in their way of looking at risk. From a generally heavily conservative perspective, they've now adopted a vision that includes greater risk-taking to achieve the business objectives.

“ There are very few decisions that aren't made better by having the general counsel involved.”

**—Pamela Marcogliese,
Partner, Freshfields
Bruckhaus Deringer**

SURVEY DEMOGRAPHICS

In January 2022, Corporate Board Member partnered with BarkerGilmore to survey U.S. public company board members on the way they leverage the general counsel in their oversight. The survey gathered 226 qualified responses—all of which are kept confidential and only used in aggregate as reported in this report. The survey was conducted online, and select participants were contacted to help shed light on certain key findings, as part of a one-on-one interview process conducted by Corporate Board Member.

COMPANY SIZE

Less than \$500M	21%
\$500M-\$1B	12%
\$1B-\$10B	45%
\$10B+	22%

SECTORS

Financial Services	22%
Technology	13%
Consumer Products & Retail	13%
Real Estate, Hospitality & Construction	11%
Automotive & Transportation	9%
Life Sciences	9%
Mining & Metals	6%
Oil & Gas	4%
Power & Utilities	4%
Health	3%
Media & Entertainment	2%
Telecommunications	2%
Government & Public Sector	2%
Private Equity	1%

BOARD COMMITTEE REPRESENTATION

Nominating and Governance	62%
Compensation	59%
Audit	59%
Finance 1	6%
Risk	15%
Technology	10%
Innovation	3%

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Corporate Board Member, a division of Chief Executive Group, has been the market leader in board education for 20 years. The quarterly publication provides public company board members, CEOs, general counsel and corporate secretaries decision-making tools to address the wide range of corporate governance, risk oversight and shareholder engagement issues facing their boards. *Corporate Board Member* further extends its thought leadership through online resources, webinars, timely research, conferences and peer-driven roundtables. The company maintains the most comprehensive database of directors and officers of publicly traded companies listed with NYSE, NYSE Amex and Nasdaq.

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