

Is Your General Counsel on Your Board?

Having your General Counsel as a member of the Board making business-decisions has endless advantages, but one stands out from the rest – the GC can no more find his/her personal solutions to situations by just emphasizing problems and letting it go at that. Once on the Board, he/she needs to work hard to find real solutions that takes the business forward overcoming legal hurdles, and would say ‘no,’ only when alternatives have been exhausted. Such a situation makes good business sense, especially in an era of increasing regulations.

A recent KPMG survey report called *“Beyond the Law”* finds General Counsel increasingly shifting from their roles of pure legal advisors to becoming business advisors, and in the process turning business risks to business advantages. The report highlights some interesting findings:

- When you are moving up, it's good to have a General Counsel on board. In fact, the KPMG global survey found that among companies with an annual turnover between \$1-10 billion, the percentage of General Counsel on business boards was the highest at 42 percent. In companies that had an annual turnover in excess of \$10 billion, only 24 percent had General Counsel on business boards, while at the other end of the spectrum, only 34 percent companies who are yet to make it to the \$1 billion benchmark had a General Counsel on board. So, it seems, the companies which are growing fast and perceiving risk management as a big factor are finding it better to have a General Counsel on the board and take part in business decisions.
- There is increased participation of General Counsel in business-decision making. Out of the 320 global businesses surveyed, General Counsel were highly involved in business decision making with 38 percent General Counsel being direct members of the main Board, while 43 percent reported to and participated in the main Board, though they did not sit on it.
- Another interesting finding of the KPMG survey is that General Counsel had a greater involvement in business-decision making in developed markets as compared to those markets that are still developing. For example, while in North America, 46 percent of General Counsel were members of the main Board, in case of Asia Pacific, this number was only 20 percent.

So, if we go by the above statistics, which is as fresh as being of November, 2012, it would seem that most companies that are spreading and aspiring to grow bigger, and most companies in mature markets like North America, already have General Counsel involved in business decision making, or directly on the main Board.

And General Counsel are also changing their attitudes and functions. They do not see pure legal decision making and managing legal processes as their only functions any more. General Counsel are

now involved in myriad matters ranging from risk management, to protecting risks, to protecting company reputations and reputation management, and unless they understand the business and are into the business decision-making processes, they can hardly contribute as effectively.

KPMG found one General Counsel summing up the situation succinctly, “Fundamentally you're there to solve problems and to anticipate problems, and sometimes those problems have legal dimensions and sometimes they don't, or the problem has a number of dimensions one of which is legal.” But to recognize that in time, General Counsel cannot be divorced from and blindsided to business-decision making.

The demands on General Counsel and expectations about their contributions has also changed radically in businesses. As the president of a global business told KPMG, the strategic purpose of the legal department is to *anticipate and protect us from potential risks because the world is changing and that creates more risk. GC should make us aware of what we should be doing and tell us this in a straightforward manner, not in complex legal language.*

That's true, but General Counsel are also learning how to communicate and place their ideas for other stakeholders in a business to understand easily. In cases where you can find such a General Counsel who can relate to the business needs and communication needs of stakeholders, it is better to have him on Board to make the best use of his talents, knowledge and analytical mindset. And it's time to check, whether your General Counsel is on your board or not.