

What Happens When GCs Aren’t Empowered

Career Development



Companies that fail to position their general counsel properly do so at their peril — exposing themselves to the dangers of corruption, scandals, and lawsuits.

I recently coauthored a piece for *The Times (UK)* with Secretary General Liesbeth De Ridder of GUBERNA, an EU-based society for corporate directors, discussing the Danske Bank case. Without getting into the specifics of the case: The Danske Bank CEO was forced to resign following a billion-dollar money laundering scandal. As we note in the article, this case is especially frustrating because it was entirely preventable — if the general counsel had been positioned to better protect the company and the CEO. Apparently, Danske Bank changed its reporting structure in 2012, resulting in the GC reporting to the CFO instead of the CEO, as was done previously. Further, it's reported that in 2014, the legal department sought additional investigation of whistleblower allegations but was overruled by two members of the executive team. The general counsel's hands were tied, unable to fully do his job.

I've spoken on this topic in the *Docket* before, and I will keep speaking on it until every general counsel has direct access to the chief executive officer and board of directors. Ideally, this includes reporting directly to the CEO and being able to interact with the board freely. **In other words, GCs having a "seat at the table" is no longer a good idea — it's good business and good governance.** In raising ACC's voice, we have persuaded others to join the chorus.

For example, in 2017, the US-based National Association of Corporate Directors issued its *Blue Ribbon Commission Report on Culture as a Corporate Asset*, adopting ACC's recommendation that boards pay greater attention to the role and positioning of the GC, stating that the GC's absence from the executive team is a red flag that could indicate that laws, ethics, and compliance are insufficiently prioritized by the company. In Europe, GUBERNA independently opined that smart

corporate decisionmakers insist upon having the view of legal.

We are in the age of the general counsel. Over the last decade, we have witnessed unparalleled growth in the power and prestige of the general counsel role. A variety of factors have led to the evolution of the GC, including the ever-changing regulatory environment in which companies do business and technological advances that continue to alter our daily work. This means that companies have had to turn to their legal teams more than ever, and not just in a legal capacity. Today, GCs advise on complex legal issues, including enterprise risk management, regulatory enforcement, environmental sustainability, geopolitical pressures, public affairs, and business strategy.

While the above is in encouraging, ACC research indicates that too many GCs do not report to the CEO. Too many, in fact, report to CFOs, which we believe to be a worst-in-class governance practice. The implications are clear, perhaps clearer today for Danske than ever before: GCs must be properly positioned on the executive team in order to effectively serve their organization. While we may debate different governance models, most GCs agree that at the very least, a direct reporting line to the CEO — and exposure at the board level — elevates their credibility and stature within the organization, empowering general counsel to impact company culture, while demonstrating the company's commitment to ethics and compliance.

General counsel are allies to the executive and, more importantly, to the board — the body charged with an organization's ethical leadership. The GC's positioning within the company truly impacts the cultural tone of the organization. Take the Danske case as a cautionary tale. If you know of or you are a GC who reports to anyone other than the CEO, share this information with your executive team. Reach out to ACC for resources, starting with acc.com/governance.

ACC will not stop fighting for your right to be at the table — today's well-run companies can't afford for you not to be.

Veta T. Richardson



Former President & CEO

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Veta T. Richardson is the immediate past president and chief executive officer of the Association of Corporate Counsel (ACC). Headquartered in Washington, DC, ACC is the world's largest legal association dedicated exclusively to serving the interests of in-house counsel. With an international membership of more than 45,000 in-house lawyers at more than 10,000 organizations in 85 countries, ACC serves as the "voice of the in-house bar" for corporate lawyers at 98 percent of the Fortune 100 and 51 percent of the Global 1000.

With more than 60 chapter operations around the world, Richardson's top priorities as CEO involve continuing to increase ACC's global footprint and charting the organization through a strategic plan and vision designed to strengthen its position as the global voice for in-house counsel. Members look to ACC to advocate in support of their rights and interests as in-house counsel, as well as to offer the practice resources, education, global legal and regulatory analysis, and networking opportunities needed to advance their professional development.