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The Evolving Role of the Global GC

Commercial and Contracts

Law Department Management

LEVEL UP!



GLOBAL GC



CHEAT SHEET

- **Line of sight.** In order to get a handle on the changing regulatory landscape, general counsel must invest in experienced local, legal, and compliance personnel. This allows for larger companies to get ahead of enforcement and compliance matters by preventing issues before they arise.
- **Finding the best.** Legal teams must now demonstrate a mastery of their company's business dealings. As a result, hiring decisions become a critical skill for leaders in a legal function.
- **Cost-saving measures.** As pressure mounts to keep costs down and efficiencies up, general counsel should reevaluate expectations placed on hiring outside counsel and consider if in-house counsel can provide the same or similar value.
- **Confidence in culture.** General counsel are steadily gaining a seat at the table, and should

use this opportunity to expand and solidify the legal department's position within the company.

Globalization has dramatically changed the role of the general counsel over the past few decades. At present, the global GC often has a seat at the management table, is seen as a trusted partner to the C-suite and board, and is increasingly responsible for enhancing the business, financial, and risk management strategies of a corporation and the integrity of its operations. The breadth of work for today's GC continues to grow — encompassing not only traditional legal roles, but also expanding to include complex compliance, intellectual property, data privacy, risk management, talent management, organizational development, and other matters. Add the challenge of overseeing a wide range of issues across multiple time zones, coupled with the need to understand the political and cultural climate of each region, and the role becomes enormous. Today's global GC may encounter issues ranging from corrupt regimes and rule of law matters, to the safety of employees, ethical matters, company culture, organization, incentives and processes, cybersecurity, fair competition, corporate governance, corporate social responsibility, and compliance among different forums and venues.

As the dual and often conflicting forces of globalization continue to take hold, multinational companies face many questions about how to best grow and expand their business in regions that are unfamiliar. How do they handle regulation and compliance in a changing world? How do they structure the team and hire efficiently in countries that are geographically far from its headquarters and are culturally distinct? How do they adapt to emerging technologies and the pressure to keep costs down? How do they handle the conflicting demands and priorities of each stakeholder in the company, including shareholders, paying customers, ultimate beneficiaries (e.g., patients in healthcare), suppliers, authorities, and employees? Which ones do they prioritize? How do they balance local interests vs. global interests and specialist functions' interests (e.g., litigation) vs. the business interests? Now, more than ever, the GC is tasked with understanding these issues and advising on the best way to grow responsibly.

Finally, the GC must take on more than an advisory role. These days, GCs need to be decision-makers, both tactically and strategically. Furthermore, GCs must show creativity in balancing conflicting priorities and overlapping regulations. General counsel are bringing in experienced legal operations leaders to focus on accelerating legal team productivity and identifying creative approaches to help accomplish more at a lower total cost. This group of legal operations professionals is and will continue to have a major impact on the transformation of law department operations and the companies they support.

Regulation and compliance

Across the world, regulations are constantly changing, and many regulators are in a "regulation overdrive." The global GC must not only understand what those regulations are and anticipate what may come next, but also recognize how they change in different countries and regions and what those countries prioritize for enforcement. To add even more complexity, GCs may encounter regulations that are in conflict with one another, especially in emerging areas like data privacy. For example, if the US government demands to see transcripts of witness interviews conducted during investigations under the FCPA, the GC must figure out how to reconcile that with data protection rules of the European Union. Of course, one tries to work with consent, but that may be challenging

when an employee is perceived to have no other choice. The GC needs to be able to balance conflicting regulations and adhere to the intent of the applicable laws while deciding what an acceptable risk is for the company. This is where outside counsel will play a critical role. Working with outside counsel who understand local as well as national regulations and culture will help with strategy and direction. They will act as advisors and counselors when these situations arise; it will be the general counsel's job to then act in the best interest of the organization and its stakeholders.

After gaining a foothold in local regulations, the global GC must then consider how — or whether — those regulations are enforced and how enforcement differs by country. Labor laws vary widely, as does the enforcement of immigration, worker status, intellectual property, and more. For example, in China, a company may face allegations of dumping (pricing below cost) and get investigated by a local authority for anti-dumping, while simultaneously facing unfair competition proceedings based on excessive pricing in a different province. It is critical to be able to chart the stormy waters and sail through the various obstacles to ensure that a decent, consistent, and defendable pricing policy is in place.

In order to get a handle on this regulatory landscape, GCs must invest in experienced local in-house legal and compliance personnel. Larger companies must move very quickly, putting in place effective local teams that can get ahead of enforcement and compliance matters — preventing issues before they arise. In order to do that successfully, each in-house counsel must have a good understanding of value chains, cash flows, margins, revenue (recognition accounting), and other financial parameters. For example, if a business working on an M&A deal assumes that a certain market share development is based on a 100 percent addressable market in a highly corrupt country, compliance issues are pre-programmed. In a highly corrupt market, maybe only about 20 percent is addressable. Those are entirely different business cases. In-house counsel must look at those assumptions before the deal gets approved. This is where building a strong relationship with the organization's CFO will be beneficial. The CFO maintains the pulse of the organization's financial standing and challenges. Be prepared to lean on this expert to gain a full understanding of the situation before assessing it solely on the legal merits.

This leads to the question of how legal and compliance teams report up the chain. Should compliance report to legal? Should they be "independent" separate entities that report to different departments? Viewpoints differ, but it's important to have a solid organization and process in place. There is no wrong answer in this case because in the end, no one is really "independent" in a company if everyone works for the same shareholders. This balance also depends on the definition of what compliance does. Is it focused on prevention (training), the development and implementation of policies, or conducting investigations and audits into possible violations of those policies? If that's the case, compliance intersects with the legal team when investigations or audits detect possible law violations or other possible dealings with external investigators and authorities. At that point, the focus should shift to legal.

Team structure

Multinational companies facing complex legal and compliance matters around the world are under pressure to assemble the right team and integrate them into the daily operations of the company. Legal teams must now demonstrate a mastery over their company's business dealings, cash flow, and finances and should understand the direction that leadership wants to take for the company. In order to be more strategic and effective, they must have working knowledge of areas that haven't historically fallen under the purview of the legal team.

For global or specialist roles, it's important to hire the best talent available anywhere, as long as there is a company office in that country. It reduces costs, avoids the disruption of moving people, and spreads legal support closer to the business — allowing for a greater diversity of viewpoints.

That's why hiring decisions become even more significant for global GCs. The most forward thinking multinational companies are looking to hire the best, period. They look beyond their borders to find top legal talent and don't limit their applicant pool to lawyers that happen to be based where the company headquarters is located. For global or specialist roles, it's important to hire the best talent available anywhere, as long as there is a company office in that country. It reduces costs, avoids the disruption of moving people, and spreads legal support closer to the business — allowing for a greater diversity of viewpoints. Corporations should take notice and adopt those practices. Not only does it show dedication to assembling the most talented team with the right skill set, but it also gives the company essential legal resources in areas that didn't already have them. Typically, lawyers that are based in regions outside of headquarters also end up supporting the local organization much more actively.

Hiring decisions thus become a critical skill for leaders in a legal function. Ongoing globalization coupled with the continuing fragmentation of local and national interests make it important to hire talent with a diversity of views, backgrounds, language skills, competencies, and mindsets. This will give a company an automatic "checks and balances" and avoid too much of a "herd" syndrome. A GC must be a good judge of (diverse) character and make sure each shares common basic working principles globally. A GC can also benefit from working with a search firm that knows the legal landscape, especially in the markets where the organization operates. A search firm can provide insights into that region and help identify talent that checks all the boxes, as well as fits within the culture of the company and team.

The more decentralized the legal team, the more important it is to have centralized reporting lines. That way, legal teams can operate independently to respond to local and regional matters, while still remaining close to the business, ensuring cooperation with peers in other regions, and acting in accordance with the central group structure and global interests. A clear corporate structure among legal teams also enhances value by reducing inefficiencies and costs. It keeps each legal entity in compliance with a standard set of guiding principles and values that are set forth by the GC and disseminated across the company.

In a decentralized global legal team, the GC should set out common values for how each team member is expected to work and lay down clear and simple guidelines for how and when to involve legal. They should also have functional central reporting lines for all members of the legal department. Furthermore, instruction and management of any outside counsel should always go through the in-house team to ensure cost-efficiency and quality control. In addition, legal should be responsible for one global budget for all in-house and external legal costs. Finally, there must be a balance between general, local, and regional functions, as well as global specialist roles, and between lawyers and paralegals. Where a full global specialist cannot yet be justified, cross-regional and cross-functional centers of excellence can help to develop the necessary global standards, practices, and processes to create a learning organization. Legal needs to optimize the global general business first in a long-term context and put the optimization of specialist interests second.

Cost and efficiency

As pressure mounts to keep costs down and efficiencies up, senior management is increasingly scrutinizing the value of external counsel. The pressure to do more with less is felt in all corners of the globe. Technology is one source of savings, as more legal departments are turning to artificial intelligence to automate and streamline routine functions such as document and contract review. Artificial intelligence, including predictive analytics, can also help teams better understand and classify data, pull out trends, manage workflow, conduct due diligence, and implement other prevention tools and processes. The cost-benefit analysis in areas like legal due diligence are clear — and becoming even clearer.

Does it make sense for companies to invest so heavily in outside counsel if in-house lawyers are better educated on the nuances of their field or with the technologies available to them? How can they maximize output while still maintaining high standards?

Meanwhile, GCs are also reevaluating the expectations placed on outside counsel, particularly in disruptive industries where change happens rapidly and new legal questions are presented regularly. Does it make sense for companies to invest so heavily in outside counsel if in-house lawyers are better educated on the nuances of their field or with the technologies available to them? How can they maximize output while still maintaining high standards?

One way to justify a legal team's value is by quantifying the legal risks and the value that the team adds to a company. For example, if a legal team is able to lower commission levels for agents, maintain fewer discount levels for distributors, or even change the business model from indirect to direct due to its risk management efforts, a GC can translate those results into real savings, and thus prove the value of legal even further. Even beyond that, the legal department could take on active commercial roles, such as the licensing of trademarks or IP-rights as part of a settlement. They could undergo specialized regulated procurement, like negotiating interconnection agreements in telecoms, negotiating or challenging reimbursement rates in healthcare, providing consultancy services to joint ventures without legal support, or pursuing payments of accounts receivable already written off.

Law firms are also wrestling with cost and efficiency questions as they figure out how to prove their value in this competitive environment. A growing number of companies are unbundling legal services and increasingly working with contract attorneys in an attempt to control costs and increase efficiencies. These contract lawyers — often very seasoned with much lower billable rates — can do the work that gets assigned to more junior lawyers at law firms or can free up overburdened in-house teams by handling complex matters. With a range of legal services available worldwide, law firms are shifting course, considering more flexible engagement structures, and even adjusting their fee structures.

Company culture

Ultimately, the role of legal is increasingly important in today's global economy. Senior management relies on legal departments to help them gain a competitive edge, make sound business decisions, and identify and mitigate legal risks. They advise on how to grow responsibly while keeping the company in compliance with varying regulations.

As a conduit between the legal department, the C-suite, and the board, the GC is tasked with not only justifying the value of a robust legal team but also with justifying its growing function within the company. The importance of the legal team is even more pronounced for multinational corporations that are continuing to grow. This monumental shift in the perception of legal departments has been

underway for some time and is continuing to gain steam. GCs are steadily gaining a voice in decision-making to manage risks before they arise. With heightened scrutiny from shareholders, the public, and regulators, failure to comply with laws and regulations can lead to dire consequences, cost significant resources, and in some cases criminal penalties.

As more companies look to expand overseas, more global GCs confront tougher decisions for how to manage expansion while mitigating risk. Ultimately, they're responsible for providing top-notch legal advice in an increasingly global, decentralized environment; keeping costs low while hiring and retaining experienced legal teams with the right skills; managing increasingly complex regulations and enforcements that vary across geographies; and doing it in regions that have vastly different cultural norms. With the right support team and connections, general counsel can navigate these challenging waters to present sound and practical solutions and actions.

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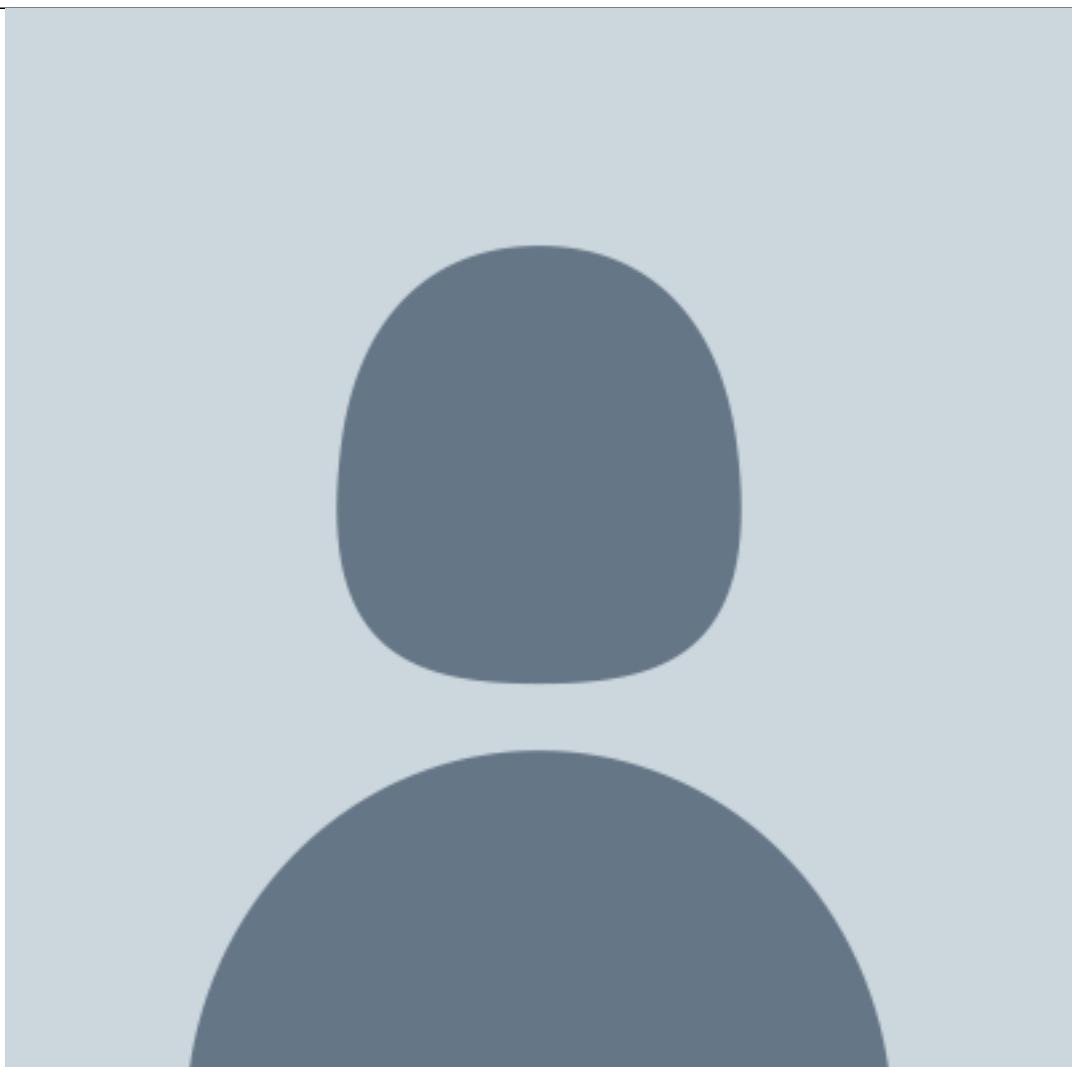


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