



Navigating the Corporate Chessboard: The Interplay of Specialized Directors and External Consultants

Compliance and Ethics

Law Department Management

Corporate, Securities, and Governance



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Professor Maria Lucia Passador is the [2025 Carl Liggio Paper Competition](#) winner for her paper, “Governance Gambits and Business Judgment in In/Out-Sourcing Tactics.” An associate professor of law at Bocconi University in Milan, Italy, Professor Passador specializes in corporate governance, with a focus on the board of directors and the chief legal officer’s role in board composition and governance. Each year ACC holds a call for papers in honor of Carl Liggio, a founding member of ACC who was passionate about the role of in-house counsel in the organizations they serve.

[Read the winning paper here!](#)

A central issue within corporate governance is the delicate interplay between leveraging internal knowledge and engaging external advisors, examining the complex legal, operational, and strategic consequences of each. For the CLO or general counsel, the challenge lies in knowing when to rely on the organization's in-house team and when to seek external counsel. Likewise, the board must also engage in a balance between cultivating internal expertise and employing outside consultants.

The integration of both, when done wisely, can enhance decision-making, protect corporate integrity, and ensure sustainable growth.

The idea for this paper emerged from my growing interest in, and practical experience with, the evolving roles of specialized directors within boards and the increasing significance of external experts in the corporate governance landscape. Over the years, we have witnessed firsthand how the dynamics of corporate boards have shifted, particularly with the rising demand for directors who bring specific expertise, such as finance, risk management, or technology, to the table. However, this integration of specialized knowledge also highlighted the delicate balance between internal and external perspectives — e.g., while a cybersecurity expert provides invaluable advice, the board had to ensure that his recommendations were aligned with the company's broader strategic vision, which required effective oversight and integration by other directors.

These evolving dynamics are what prompted me to explore this critical issue further. The Liggio Call for Papers offered an ideal platform to raise awareness on this matter and to present my research: By submitting my work, I aimed to contribute to the growing knowledge on this subject, particularly as it pertains to how corporate governance can be reimagined in an era where boards must increasingly rely on specialized expertise, both internal and external, to navigate the complexities of modern business. Through this paper, I hope to foster a thoughtful discussion on how governance structures can adapt to these demands, ensuring that they remain agile, effective, and resilient in an ever-evolving corporate environment.

[Hear about the paper's findings and applications in depth at the ACC Chief Legal Officer Global Summit, 21 - 23 May 2025, in Barcelona, Spain. Register today!](#)

The general counsel's role in modern governance

The GC's role has evolved into a complex balancing act that demands both legal acumen and strategic oversight. No longer confined to interpreting laws and ensuring compliance, today's GC must navigate an intricate landscape where regulatory scrutiny, risk management, and corporate strategy converge.

The paper underscores how procedural formalities — embodied by the trend of proceduralization — are reshaping the very nature of corporate decision-making. This shift has profound implications for a general counsel, whose responsibilities extend beyond mitigating legal risk to actively shaping governance frameworks that balance compliance with substantive decision-making.

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The challenges

One of the most pressing challenges is the paradox of risk mitigation through proceduralization. While engaging specialized directors and external consultants can improve the quality of board decisions, this same reliance may increase the legal exposure of directors.

Courts applying the Business Judgment Rule expect directors to exercise independent judgment and demonstrate due diligence when making decisions, particularly when relying on external expertise. If directors defer too readily to specialist advisors without critically assessing their recommendations, they risk breaching their fiduciary duties. The mere act of hiring an expert does not absolve the board of liability, nor does it create an automatic shield against shareholder litigation. A failure to properly evaluate external advice or to ensure that consultants are free from conflicts of interest can lead to claims of negligence or self-dealing.

The GC must therefore establish rigorous due diligence protocols, ensuring that every external engagement is defensible under legal scrutiny. The selection of advisors must be carefully documented, their recommendations must be critically assessed, and the board's rationale for following or rejecting external input must be explicitly recorded.

This obligation is particularly critical when addressing the risks associated with conflicts of interest. Many consulting firms and advisory services operate in multiple capacities, offering governance recommendations while simultaneously engaging in business relationships with investors, competitors, or regulators. Such entanglements can undermine the objectivity of their advice, leaving directors exposed to allegations of improper influence.

The general counsel must implement stringent conflict-of-interest policies, mandating full disclosure from external advisors and ensuring that their recommendations are independently vetted. The precedent set in cases such as *Smith v. Van Gorkom*, 488 A.2d 858 (Del. Jan. 29, 1985), serves as a stark warning: Directors who fail to properly inform themselves before approving a transaction, even when relying on external expertise, may be held personally liable for breaching their duty of care. This reinforces the need for a governance framework where external input is carefully scrutinized rather than blindly accepted.

Internal experts versus outside consultants

Moreover, modern corporations face increasingly complex challenges, from regulatory compliance to cybersecurity threats and ESG obligations. Appointing specialist directors with expertise in these fields can enhance board competency, but such directors cannot function in isolation. Their role must be integrated into a broader governance structure that maintains board-wide accountability.

There is a risk that an over-reliance on specialist directors can lead to authority bias, where generalist board members defer excessively to their specialized colleagues, weakening the collective oversight function of the board. Moreover, if specialist directors dominate governance discussions, the company may face heightened scrutiny over whether board decision-making remains independent and sufficiently diversified.

External consultants offer an alternative means of accessing expertise, particularly in rapidly evolving areas where in-house capabilities may be insufficient. Many corporations, particularly those operating in highly regulated industries, engage advisory firms to guide executive compensation policies, risk management frameworks, and regulatory compliance strategies.

The financial sector provides notable examples: JPMorgan Chase retains independent compensation consultants to ensure that executive pay structures align with best practices, while simultaneously maintaining a board composed of individuals with deep industry knowledge. This hybrid model, in which internal directors provide continuity while external consultants offer specialized, independent advice, can be highly effective if properly structured.

However, the effectiveness of this approach depends on the ability of the GC to enforce robust oversight mechanisms. Consultants must be engaged through transparent processes, their independence must be verified, and their recommendations must be subject to rigorous board-level scrutiny.

To prevent a dilution of fiduciary responsibility, the GC should design governance frameworks that clarify the respective roles of internal specialists and external consultants. This requires defining clear thresholds for when external advisors should be engaged and ensuring that their input supplements rather than replaces the board's decision-making responsibilities.

One approach is to implement independent advisory committees that serve as intermediaries between external consultants and the full board. These committees can provide an additional layer of oversight, ensuring that external recommendations are critically evaluated before being adopted. By formalizing this process, corporations can reduce the risk that directors will become passive recipients of external advice rather than active decision-makers.

Avoiding the “theater board” conundrum

Beyond these structural considerations, the paper highlights a growing concern that proceduralization, while designed to enhance accountability, may instead create governance structures that are more concerned with appearances than with substance.

When boards become overly focused on compliance checklists, documentation requirements, and process adherence, they risk transforming governance into a performative exercise rather than a substantive oversight function. This phenomenon, sometimes referred to as “theater boards,” emerges when governance decisions prioritize legal defensibility over strategic effectiveness.

A company may, for instance, engage a high-profile consulting firm to validate a major business decision, not because the firm's analysis is indispensable, but because doing so provides a procedural safeguard against litigation. The GC must be vigilant against such tendencies, ensuring that procedural compliance does not come at the expense of genuine deliberation.

The legal implications of outsourcing governance functions are particularly significant. The evolution of consulting firms into quasi-governance entities — offering services that blur the line between advisory roles and direct corporate oversight — raises fundamental questions about accountability. If boards increasingly delegate strategic oversight to external firms, the very foundation of corporate governance is called into question.

The German and UK Corporate Governance Codes emphasize the importance of board independence, yet the increasing reliance on external advisors risks creating a governance environment where board autonomy is compromised. The GC must therefore act as a guardian of governance integrity, ensuring that the board retains ultimate decision-making authority and that external consultants serve as advisors rather than *de facto* directors.

The GC as architect of the governance strategy

For the general counsel, the implications of these governance trends are profound. The role demands not only legal expertise but also a capacity for strategic foresight, ensuring that procedural safeguards do not stifle effective decision-making.

As corporations continue to navigate an increasingly complex regulatory and risk environment, the GC must act as the architect of a governance framework that is both legally sound and strategically resilient. In this evolving landscape, the GC's ability to balance procedural rigor with substantive governance will determine whether corporate boards remain genuine oversight bodies or devolve into mere regulatory compliance mechanisms.

The challenge lies in ensuring that governance remains an active, engaged function rather than a passive adherence to formalities — a challenge that will define the role of the GC in the years to come.

Here are key considerations for establishing a governance strategy:

- A forward-looking governance strategy must integrate the lessons from the paper into a coherent legal and operational framework.
- Due diligence protocols for external advisors must be standardized and enforced, ensuring that every engagement meets strict independence and competency criteria.
- The composition of the board should be optimized to avoid both excessive reliance on specialist directors and undue deference to external consultants.
- Oversight mechanisms, including independent advisory committees and enhanced documentation requirements, must be implemented to ensure that board decision-making remains both informed and independent.
- The proceduralization of governance should be carefully calibrated to balance legal defensibility with substantive oversight, preventing a shift toward performative compliance.

Concluding remarks

This paper underscores the intricate balance between leveraging the enduring expertise of internal directors and strategically integrating the nimble insights of external consultants, while offering comprehensive policy recommendations designed to fortify governance frameworks, mitigate legal exposure, and enhance overall accountability. By meticulously dissecting the interplay between procedural formalism and substantive fiduciary responsibilities, the study makes a significant contribution to both academic and regulatory discourse, serving as an essential roadmap for reconciling the dual imperatives of rigorous oversight and dynamic strategic adaptation.

For a GC, the takeaway is as unmistakable as it is empowering: The GC must harmonize internal expertise with external advisory inputs to navigate the complex world of corporate governance. Each decision is a strategic play that not only safeguards the organization's legal integrity but also transforms potential vulnerabilities into strategic assets.

In this grand game of corporate oversight, every carefully documented action and meticulously vetted consultation stands as a testament to a proactive, transparent, and resilient approach, ensuring that the company remains well-positioned for sustainable success amid an ever-evolving legal and regulatory landscape.

Checklist to Guide Corporate Governance Strategy Development

Develop a hybrid governance framework

? Integrate internal and external expertise: Design a governance model that balances the

continuity and stability offered by internal specialist directors with the strategic, situational insights provided by external consultants.

? **Establish clear protocols:** Implement stringent procedures for the selection, engagement, and oversight of external advisors, ensuring that all steps are thoroughly documented and aligned with the company's strategic objectives.

Enhance oversight and transparency

? **Implement robust monitoring systems:** Develop internal dashboards and periodic reporting mechanisms to track the performance and contributions of external experts.

? **Foster a culture of continuous review:** Encourage regular training sessions and workshops for board members to stay abreast of emerging trends, regulatory changes, and best practices in corporate governance.

Prioritize legal risk management

? **Ensure rigorous due diligence:** Assure that every external engagement undergoes a thorough vetting process to assess the advisor's qualifications, independence, and potential conflicts of interest.

? **Maintain comprehensive documentation:** Keep detailed records of all advisory processes, serving both as an internal control measure and as critical evidence in the event of legal challenges.

Cultivate strategic alignment

? **Align governance with long-term objectives:** Ensure that every decision, whether informed by internal expertise or external advice, is firmly anchored in the long-term strategic interests of the corporation.

? **Promote cross-functional collaboration:** Encourage open communication channels between the board, internal management, and external consultants to foster a cohesive approach to risk management and strategic decision-making.

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subject addressed. Rather, they are intended to serve as a tool providing practical guidance and references for the busy in-house practitioner and other readers.

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