

Creating connections, bridging gaps

How general counsel can shape their future

Foreword



By Jonathan Marsh

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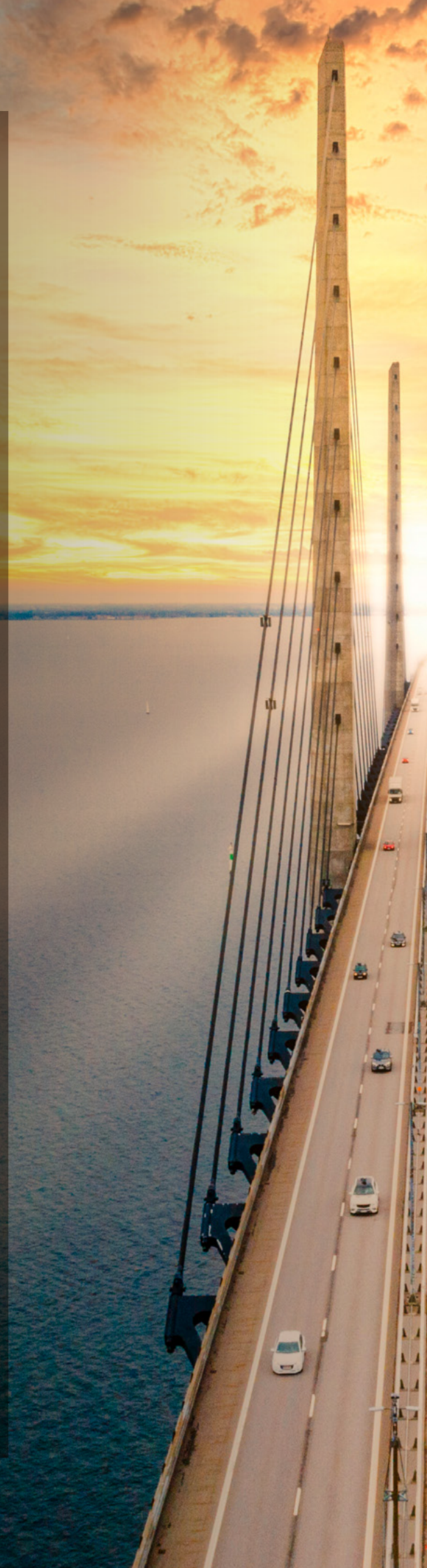
The European Company Lawyers Association is very pleased to endorse this inspiring report on *Creating connections, bridging gaps*, the latest in a series of general counsel reports from CMS, one of the world's largest and most forward-looking law firms.

General counsel and their in-house legal teams have been on a roller coaster ride during 2020. All the plans and predictions made at the start of the year were quickly derailed by the coronavirus pandemic, and in-house lawyers found themselves facing a new and very urgent set of challenges, which in many cases are still ongoing or even growing.

Some businesses have looked to their general counsel to play leading roles in – or even to lead – their pandemic crisis response teams. Others have been less prominent, but have still had to deal with existential threats to their businesses. So it has been a difficult time for most GCs to consider wider issues, or to shape their careers and roles, rather than having them shaped by external events. Yet the subtitle of this report – *How general counsel can shape their future* – has never been more pertinent.

Understanding how we can shape our futures is vital not only for our professional development but also for advancing legal departments generally. This year has brought the sense that sometimes things have to change: that the old way of doing business is no longer sustainable, and that an in-house legal career may now offer new possibilities and opportunities, and in many cases require new skills and attitudes.

At ECLA we invite everyone to join the discussions and develop the findings of this report even further. We are convinced that there is no better forum than our 22 member associations, which represent 21 different European jurisdictions from Finland to Portugal and from Greece to Ireland, and more than 65,000 European company lawyers. We look forward to developing the report's themes during the coming months with CMS, online through webinars and – if circumstances allow it – in real-world presentations and seminars.



Contents

Introduction	4
About you	6
How others see you	12
Your role	18
Your skills	22
Influence	26
Risk	34
Ethics, culture and reputation	38
How do you stay informed?	46
The legal department	50
Your team	54
Buying legal services	68
Innovation and change	72
Outside the business	82
The future	83
A bridge to the future for general counsel	84
About CMS	87
About ECLA	87

Introduction

Over the past decade we've engaged with general counsel around the world to produce a series of reports on aspects of the GC role. We wanted to make this report different from those that came before it. In fact, of course, events have made it more different than we could ever have imagined. When we started interviewing GCs across Europe, no-one had heard of Covid-19.

Now we are publishing this report in what seems like a different world from the one where we began it. We have had to ask ourselves: is it still relevant? The coronavirus has brought not only human tragedies but also worldwide social, financial and commercial disruption. Are our questions about the in-house profession still valid in such a challenging and changing environment?

We believe they are. Our very first report on general counsel came about during the global financial crisis. Such crises accelerate change, and alter the way we view things. That global emergency boosted the status and value of many in-house lawyers, helping them achieve the ambitions we discussed. By helping their businesses navigate troubled times, dealing with new requirements in areas such as compliance, they rightly became more influential.

In the present crisis we will see other GCs experience a similar change, as their companies focus on survival, risk and sustainability in the 'new normal'. We believe many are ready to seize such opportunities, to prove their worth and to grow and develop their roles. If the crisis accelerates pre-existing trends, they will be trends that GCs have already recognised. No-one would have chosen a pandemic as a way of facilitating change, but significant changes are happening, and GCs have their part to play in making sure those changes are as positive as possible for their businesses and their teams.

This report is intended to prompt reflections on what it means to be a GC. It doesn't offer the 'secrets of success'. There aren't really any secrets. What enables people to succeed is mostly quite clear: what's difficult is empowering them to do it in practice, when they are constrained by realities such as time and money. So this report will remind you of things you already know, but which are not always top-of-mind for a busy GC. It may also encourage you to think about some of those things from new angles or to consider the connections between them, or to open doors that have previously been closed.

In these difficult times, it may seem harder than ever to engage with some of these ideas – but a changing world always offers us opportunities to rethink and reshape what we do. Many businesses have responded with flexibility and creativity to the challenges brought by Covid-19. Forward-thinking GCs can harness some of that power.

How to read this report

Unlike our previous reports, which typically considered a single aspect of the GC's role, this report considers and connects many different parts of the GC world. Rather than setting out conclusions, it asks questions and discusses options, drawing on all our previous research and our conversations with many hundreds of GCs. It does not include answers to the questions – because the answers will be different for each GC who reads it.

The questions can be read in any order; you can jump backwards or forwards as you wish. However, if you choose to read the report sequentially, you will find it takes you on a journey that starts and ends with questions about you, and in between them ranges across the whole landscape of GC experience.

- It starts with you, asking whether you're a bridge builder, looking at some of your strengths and weaknesses, and how well you know yourself. Inevitably it then moves on to how other people perceive you, and how you and they see your role.
- The next section is about the wide range of skills a modern GC needs, followed by a section covering a single key skill: that of influencing people.
- We then look at a range of topics – risk, ethics, culture and reputation – that go far beyond the traditional legal responsibilities of an in-house lawyer, but which are likely to be key to the work of a GC who is a genuinely strategic business counsel.
- A large part of the report is dedicated to the practicalities of running a modern in-house legal team: how GCs can keep themselves informed, how they structure the legal department, how they develop and manage their teams, and how they buy external legal services.
- We then discuss innovation and change: two essential topics that have a bearing on nearly everything the report covers.



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- Before we end, we look at the farthest extent of a GC's orbit: the impact they have beyond their own business. And at the end we gaze into the future and ask a fundamental question about your career as a GC: how will that end? What will your legacy be to your business and your colleagues, and what will it leave you with? As we began by looking at the GC as a builder of bridges in corporate life, we conclude by considering how they can build the bridge to the future they desire.

There's no executive summary or conclusion to this report. It's a tool you can use to help you think about how you might develop your skills, your role and your career. It's something to dip into and reflect on. Ideally you'll spend more time thinking about it than reading it. But however you choose to engage with it, we hope you find at least some of it interesting or thought-provoking, and relevant to your own situation. And if you'd like to discuss it, we'd be delighted to talk to you.

We'd like to thank the 18 inspirational lawyers featured in this report, as well as the countless in-house lawyers with whom we've had illuminating and helpful conversations over the years. And we are particularly grateful to Jonathan Marsh at ECLA, without whom this project would not have been possible.

About you

1. Are you a bridge builder?

This is a key question. The GC has to span many divides: between lawyers and non-lawyers; between commercial, legal and ethical imperatives; between different approaches to risk; between cultures; and in many cases between geographies. They have to be able to cross corporate borders easily and fluently – to be as much at home in the boardroom or with the sales team as they are in the legal department.

But more than that: the most effective GCs are the ones who create connections across divides – who can enable the legal and marketing teams to find common ground, or help lawyers from different jurisdictions work collaboratively to advance corporate goals, or pilot an ethical policy that will bring employees together.

In the time of the pandemic, it is perhaps harder than ever to do this, when so many organisations have embraced an unprecedented degree of remote working, restricting face-to-face interaction between teams and travel between sites. Yet it is also more necessary than ever. As companies strive to adjust to an unfamiliar and still rapidly changing world, seeking to protect not only their balance sheets and reputations but also their staff and their customers, GCs – whose role gives them both commercial and ethical responsibilities, as well as duties relating to compliance – are uniquely placed to help reshape the way their colleagues work.

2. How do you work with people in your business?

There are many different working styles. Most people have several – usually fairly similar, or at least related – and switch between them according to the situation.

The GC needs a variety of styles. As a bridge builder, they need to work with very different people. But they also need to display some consistency and what is sometimes described as ‘authenticity’. A GC whose behaviour is seen to be very different in front of different audiences may risk the charge that they are not as reliable or independent as they need to be. And where the GC is leading a team, that team needs to be able to feel they can rely on the GC to deliver an element of certainty, or at least predictability.

At a simple level, it is worth asking how well you work with the people in your business. It is not uncommon for lawyers to be ‘loners’, to a greater or lesser degree. Larry Richard’s well-known paper ‘Herding Cats: The Lawyer Personality Revealed’ suggested that on average lawyers participating in Caliper Personality tests score much higher for ‘Autonomy’ and lower for ‘Sociability’ than the general public.

There are grounds for believing that this may be changing among younger lawyers, and that lawyers who work in-house have a greater attraction to teamwork than some of those in private practice. But Richard's thesis still carries some force. The law is not a typical first choice of profession for someone whose main drivers are a wish to work with people and an active preference for the pleasures of co-operative working. Some GCs may need to move a little outside their 'comfort zone' to optimise their working relationships.

A related question – and one that goes back to the idea of the bridge-builder – is 'how well do you get on with people who aren't like you?' The perfect GC is like the perfect politician in this respect: able to reach out to all, to be at ease with anyone, and to put everyone at their ease. Most of us can't quite manage that; we are only human. But if you know you get along better with some people than others, then you can find ways of compensating for that, and strategies that will help you get closer to those from whom you feel more distant.

You may be familiar with the 'false consensus effect': the name given to the way in which we tend to overestimate how much other people agree with our opinions. A similar trait is our tendency to assume that others think and feel in the way we do ourselves, holding the same values and having the same drivers and levers. It's good to take a step back to assess more clearly how your colleagues differ from you. It may sometimes change your view of how effectively you work with them, and it may help you to work more effectively with them in future, especially at a time when businesses are increasingly coming to appreciate the commercial – as well as moral – importance of diversity.

3. How do you break bad habits and develop good ones?

We all have habits. It's impossible not to. And it's something you can use to your advantage, by developing good ones that will help you change and grow (and by losing the bad habits that may hold you back). That's an obvious route to self-improvement – it's no accident that Stephen Covey's 'The Seven Habits of Highly Effective People' has sold millions of copies over three decades and been translated into dozens of languages.

But an important question is: what do we mean by habit? The seven habits described by Covey are what we might call 'high level' habits – "Think win-win" for example. However, if you are a stressed and stretched GC, even a small practical change to the way you habitually deal with your email inbox, or structure your day, could have an immediate and quite significant effect.

A further complication is that the distinction between 'good' habits and 'bad' habits is not as absolute as we might wish it to be. A particular habit can be better in some contexts than others. A good habit can be bad if it stops us doing something new.

One important insight is that changing your habits is harder if you don't understand the drivers behind them. In one sense a habit is a behavioural bias, and it probably reflects one or more cognitive biases. So how do you control your biases? Our (conscious) priorities and (unconscious) prejudices both sway our perceptions and actions.

There's a whole library of books covering this area, ranging from the highly scientific to the very 'new age'. All we can do here is point to the likely value of identifying and changing any bad business habits you may have, and of developing patterns of more effective behaviour which can become habits through repetition and reinforcement.

4. Would you be good at sales?

Many lawyers would answer 'no' to this. A few might even add 'and that's why I became a lawyer'. But looking behind the question will show that good sales people have many skills and qualities which are valuable across the corporate environment.

We will say more about the need for GCs to be persuasive later. But selling is about much more than simply persuading. Good sales people listen and display empathy, and are good at building relationships and trust. (Their listening is often what is called 'active listening'.) No doubt these abilities help them to be persuasive, but they also serve to foster long-term value and get transactions through rough patches.

Sales people are also good at communicating. Ignore the cliché of the sales person who talks endless fine-sounding nonsense. Most people who are good at sales know how to get their message across clearly, simply and concisely. They are good at telling (true) stories. Many of them are naturally confident; others know how to appear confident, because people tend to trust confidence. They develop and hone their interpersonal skills.

Every one of these attributes is valuable to a GC, or any lawyer working at a senior level. So those lawyers who say 'I'd be no good at sales' – especially the minority for whom that is almost a badge of honour – might like to think about how fostering such attributes could help them.

The most effective GCs are the ones who create connections across divides.

5. How agile are you? How flexible?

You will have noticed the frequency with which ideas like ‘agility’ and ‘flexibility’ now occur in books and articles on business and management – even though good business people have always been flexible, and the idea of the ‘agile organisation’ has been around since the last century.

One reason these ideas have had more attention in recent years is the need for corporate responses to tech-driven disruption, as well as the opportunities for agility and flexibility that new tech affords. And this year, of course, the pandemic has forced many of us to be more flexible than we could ever have predicted.

What does that mean for an individual rather than a company? Everyone who rises to a senior corporate position is probably flexible to some degree. It is difficult to succeed otherwise. But many could be more flexible – most of us have come across people in our professional lives whose intransigence has made them harder to work with.

Agility is a different matter. It involves adaptability and the freedom to move and change. To develop the underlying metaphor: trees are flexible – they bend in the wind. But the animals and birds that live in them are agile. They can move to new trees, or even new forests. They can start afresh.

We would suggest that, while senior business people are all at least a little flexible, they are not necessarily all agile. Are you?

6. Are you a confident business person, rather than just a confident lawyer?

A traditional complaint that business people make about lawyers (and one that we have found repeated in our own research) is that they are not very commercial or entrepreneurial.

The complaint is more nuanced than it first appears. In-house lawyers are sometimes seen as being more commercial than those in private practice. And perceptions have improved in recent years, with a greater number of GCs now being seen as genuinely commercial. In some markets it is now hard to survive (or even be appointed) as the GC of a major corporate if you are not seen in that way.

But there is a difference between being seen as commercial and being a genuinely confident business person. There are GCs who adopt the ‘fake it till you make it’ approach in this area. And there are GCs who are happy to express a commercially informed view, secure in the knowledge that someone else will actually be making the final decision.

As we discuss below, a minority of GCs have ambitions to move into the c-suite, rather than continuing on a career path as a GC. They are the ones for whom a confident and genuine business mindset is essential. But increasingly it is a major advantage even for those who see their career as continuing in an in-house legal department. For a board looking to recruit a GC it is an obvious differentiator.

We should add that there are still some CEOs and other business people who would prefer their lawyers *not* to be overtly commercial. Their view is that *they* are the entrepreneurs, and that lawyers are there to provide purely legal analysis and support. In some cases this is a purely personal view, in others it may reflect the development of the in-house profession in a particular jurisdiction. GCs working for those CEOs will have to do so on those terms. But the proportion of such roles in the international in-house profession is diminishing.

7. Do you make your own luck?

Some GCs will laugh at this question. They shouldn’t. It is entirely possible to ‘load the dice’ in your favour – without actually ‘cheating’. It can be as easy as making sure you are prepared for all the likely eventualities, instead of just the most probable one or the one you hope will happen.

Are there other ways to improve the odds? Some people try to bend probability by ignoring it. The late Steve Jobs of Apple famously had what his colleagues called a ‘reality distortion field’ – a mixture of energy, enthusiasm and charisma that made supposedly impossible projects happen by persuading people they could be done. But the idea pre-dates Steve Jobs by millennia. Any leader who has rallied their troops or won an election or given a pep talk to a sports team has, to some extent, deployed their own version of the distortion field.

Sometimes people who try to make their own luck like this are just fooling themselves. Nevertheless, at other times, it’s an approach that works.

It seems to us that many successful GCs and other business people in fact have the ability to wear what are sometimes called ‘rose tinted spectacles’. Seen through these, the world looks good. And a good leader can use that vision to inspire their team and increase the chances of a positive outcome.

But a good leader can also take the tinted glasses off, for a more objective version of reality. The judgment they form from that tougher analysis should help them decide if a distortion field might help them achieve their goals, or whether a more hard-headed approach is required to change the odds.



Aurélien Hamelle

General Counsel, Total

I am SVP, General Counsel at Total SA in Paris. I came in-house in 2016, after starting at Freshfields and then moving to white collar crime specialists Metzner Associés, where I became a partner, I joined Total after three years as a partner at A&O.

My background is not typical for a GC, because before moving in-house I was exclusively a dispute resolution lawyer. What's interesting is that Total wanted a seasoned risk manager to head the legal function. It shows the importance they attach to compliance. And being a GC in any large corporation is increasingly about ensuring compliance and managing risk.

The strategic aspect of the law and legal risk has grown in the corporate consciousness. It's an evolution in the way decision makers see risk.

Being a GC in any large corporation is increasingly about ensuring compliance and managing risk.

My disputes experience obviously helps in areas like compliance. But I believe it also gives me a sense of where the practical risks – rather than just the textbook or theoretical risks – may be in M&A. Litigators usually get involved in M&A when deals go wrong, so getting up to speed on the earlier stages of M&A was challenging. But I have a good team to support me, and I was soon able to lead on the Maersk Oil acquisition, which was one of Total's largest deals in recent years.

The less litigation I do now, the better I feel. To use an analogy from the energy business, I've moved from being a downstream lawyer who deals with risks to being an upstream lawyer who prevents them arising. My years as a disputes lawyer have given me a good sense for how to avoid litigation and how to avoid falling out with regulators which is a valuable skill to have in today's environment.

About one-third of my time is spent on risk management, including compliance, and one-third on legal work. The other third goes on things like public affairs, committees and managing the legal function.

We have 480 lawyers in Total, in affiliates, business units and headquarters. In Paris there are about 60 lawyers in Corporate, where I sit, and about 180 in the legal departments of our four business units.

One important new thing we have is a legal operations lawyer: a COO for the legal department. She and her team run things like our panels appointment process, matter management systems, digital tools – and her job will continue to grow.

We also have a few auditors, and a few paralegals in common law countries. Not so much in civil law countries, though that may change. We're also recruiting IT specialists – not technicians, but high fliers to help with our strategy.

Having specialists to run the function makes sense. There's a lot of expectation in the corporation that services will be delivered in a lean and digital way. We can't be the only part that's not digital. It also encourages you to look at what's important and what's not – at what I really need and what my clients really need. We now have several projects underway to change the way we deliver advice. And developments like contract automation may mean that in some areas we will have fewer lawyers – or the same number doing more.

The number of pure contract lawyers has already shrunk to some extent over the past decade, in parallel with a rise in the number of compliance lawyers, as well as human rights lawyers, and environmental and health and safety lawyers.

Such developments make it even more important that we provide opportunities for a diverse career path. We expect our junior lawyers to get experience in several different teams – or even different business units – and in two or three different legal spheres. It creates cross-fertilisation of knowledge and ideas, which is good for the business. We try to let people express their intentions and desires, but we also identify individuals we'd like to explore new geographies or functions.

Another thing that helps – in fact, an important part of leadership – is breaking the pyramid approach to decision making. I don't buy the idea that truth comes from the top. It comes with collective thinking. Our managers work with their teams to discuss how we should tackle various issues. It means we spend more time teaching the younger generation. It also calls for humility – you can't be a king if you're thinking collectively.

When I moved from private practice, I walked out of my comfort zone. And it confirmed what I thought: change is very important in career progression.



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8. How advanced is your long-term career plan?

Research which CMS has conducted in the UK shows that a majority of GCs just want to be good GCs – with some planning to stay in their existing roles, while others look for a move to a bigger or more challenging business, or a more widely-defined GC position. But a significant minority have ambitions to move to the c-suite, typically as a CEO or COO. Others contemplate a portfolio of non-executive directorships, a move into consultancy, or a more radical next step.

Whatever your ambitions are, they should inform the decisions you take about your work: in particular, the skills you seek to develop, the experience you try to gain, and the contacts you build. This is true for GCs who want to stay in their present jobs as well as those who would like to move on. Your business will not stay unchanged for years. It will evolve and adapt, and you will need to adapt with it. When new skills may be needed, the wise GC will acquire them in advance.

However you design your career plan – even if, like one of the GCs we interviewed, you want to abandon the law and become a novelist – you should already be building the foundations that will help you realise it.

9. How well do you know yourself?

The injunction to ‘know yourself’ is an ancient one. It was inscribed in the Temple of Apollo at Delphi. As well as being good general advice, it is relevant to GCs in a number of ways. Here are just two:

- **Imposter or Dunning-Krueger?** People suffering from Imposter Syndrome have unfounded doubts about their abilities and accomplishments. They may achieve high-ranking and responsible roles, but remain afraid of being ‘unmasked’ as frauds.

At the other extreme, the Dunning–Krueger effect, named after the psychologists who described it in a 1999 paper, suggests that many people hold unduly favourable views of their abilities precisely because they are not very able. Not only do they perform badly but their incompetence deprives them of the ‘metacognitive’ ability to realise it. Bluntly, they think they’re smarter than they are.

GCs are perhaps more likely to be dealing with people who are subject to the Dunning-Krueger effect than they are to be affected by it themselves, but there are certainly GCs who suffer from Imposter Syndrome. Different authorities suggest different ways of tackling it, but they all lead to the destination of knowing yourself, in the sense of having a true and fair assessment of – and confidence in – your own abilities.

- **Permission to consider the possibilities.**

The legal career path can be a narrow one, usually involving specialisation from university onwards. A particular knowledge set is developed, and a particular set of abilities is cultivated and valued. But as the role of the modern GC becomes ever more multifaceted, and the range of other career options for GCs grows, a narrow view of yourself as a lawyer can hold you back. As Aurélien Hamelle observes on page 9, change is very important in career progression. You know you’re a lawyer, and probably a good one. But what other abilities do you have, or do you have the potential to develop?

Some philosophers have argued that we can achieve self-knowledge through self-contemplation. The obvious drawback here is that if our characteristics include flaws such as self-deception or a lack of judgment (or Imposter Syndrome or the Dunning-Krueger Effect) then the process will be inherently unsound. As we explore in the next section, feedback from more objective tests or from other people can be invaluable, even if it may also sometimes be embarrassing or uncomfortable. It’s never been an easy option.

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How others see you

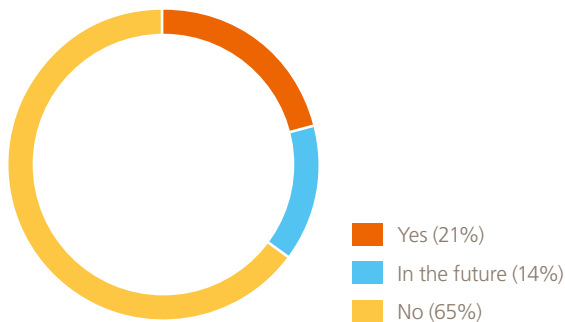
10. How good are you at demonstrating the value you add to the company – e.g. do you use KPIs?

When we began our programme of GC reports, we surveyed GCs to find out more about how they used key performance indicators (also sometimes called, for example, key performance metrics).

GCs have historically found it challenging to demonstrate the value of the legal department to the business. Increasing regulation and compliance issues may have made the issue clearer in some companies, as may the sort of changes caused in many businesses by the crises of recent years, such as the global financial crash and the pandemic.

But it is still a difficult question for many GCs. In our report, we showed that there are good, practical ways to demonstrate the legal department's contribution to the business on terms derived from the business itself. Furthermore, we concluded that being able to use such metrics to demonstrate success was important for GCs seeking to be recognised as genuine business counsel. However, the data shows that many legal departments

Do you use KPIs?



Source:

CMS 2011 report *General Counsel: Vague about value*

still don't use them, or don't use them very effectively.

So – if you don't use KPIs, how do you show the value you add to the company? And if you do have KPIs, what could you do to make them more effective?

If you don't use KPIs, how do you show the value you add to the company?

11. How do you develop your personal brand?

Even the concept of a personal brand may be alien to some GCs.

A personal brand is built around your character and your values, and how you express them. It's not simply the presentation of who you are, but the bundling of key things about you into a format that can be communicated easily, particularly in the age of LinkedIn and other social media. Personal brand is not just an online construct – you could still have one if you didn't even own a phone or computer – but it is certainly a concept that has come of age in tandem with the rise of social media.

There are many detailed guides to establishing and maintaining a personal brand, but the basics are as follows. First, as with a corporate brand, establish what audience you want to reach or impress, and what you want to be known for. This will probably involve much less research than a corporate branding exercise, but still requires a degree of truthful reflection and self-criticism. Your brand will be a failure if it's not authentic, so you need a good idea of who you really are, and your strengths and weaknesses. Having decided this, in essence you then look for ways to transmit it to your selected audience – through blogging, tweeting, networking, authoring articles, speaking, media appearances or whatever. Make sure you are good at telling your own story: that is, explaining your life to date in a way that reinforces your brand. Ideally you'll be able to do that as an elevator pitch too.

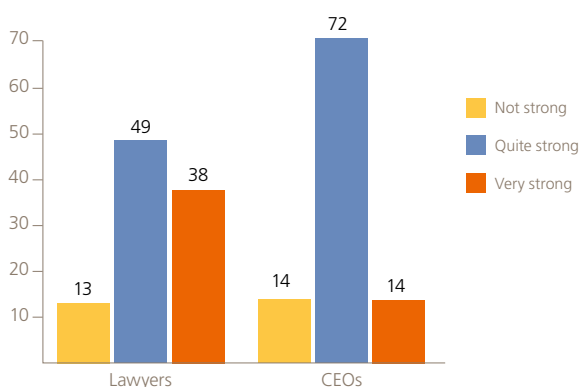
If you build it well, your brand will help you stand out. It will help people form a clear mental picture of who you are and what you believe. It will probably help them to like you, sympathise with you and trust you.

12. How does the CEO (or your boss, if your boss isn't the CEO) view you?

And does your boss have the same view of you as the most junior person in the legal department? Probably not – but what's the difference, and why?

When we began researching the issues that affected in-house lawyers, a decade ago, we found that CEOs and other executives tended to have a significantly less favourable image of their GC (and their in-house legal team) than the GC had of themselves. That's not surprising, although it's a useful prompt to think about why that should be so.

What has been the contribution of the in-house legal function to the commercial value of the company in the past year?



Source:

CMS 2010 report *From in-house lawyer to business counsel*

We suspect that, if we ran that survey again today, we would get results that were a bit more favourable to GCs. As we have already said, the role of GC has unquestionably moved more centre-stage over the last decade, not least because of increasing corporate concerns about risk. But there are still many GCs who could do more, such as using the methods we outlined in our *General Counsel: Vague about value* report, to communicate their value to their bosses.

13. Do people like having you as a boss?

There is a difference between being liked and being liked as a boss. The latter is not so much an opinion of you personally as a judgment on what you are like to work for: whether you are reliable, fair, good at giving feedback, etc.

Bear in mind that you and the people you manage might have quite different ideas about what constitutes a good boss. And in practical terms, their idea or ideas may matter more. For the CMS *Room to grow?* report, we surveyed a variety of GCs and more junior members of legal departments. The GCs tended to be focused on areas such as team meetings, training and communicating strategy, while their staff were much more interested in strong leadership, feedback and recognition.

Even if you know what makes a good boss, though, you may find it hard to live up to. There are plenty of GCs who don't like having 'difficult conversations' with people in their team, or who struggle to find time to manage their teams properly, or who micromanage (or don't manage enough). The present pandemic has only made such problems worse. Yet most of them can be addressed and at least partly solved, provided you recognise them. If you don't know what your team honestly think of the way you manage them, it would be worth finding out. If it's appropriate to gather anonymous data, your HR department may be in a position to help with this, or an external consultant may be useful.

14. Do you have as much credibility as you'd wish, at all levels in your organisation?

How much of your credibility comes from your job title, how much from your corporate relationships, how much from your record, how much from your knowledge and abilities, and how much from your team? What other factors are important?

Those are big questions, and the answers will vary according to whose belief in you we are discussing. A GC would like to be credible with everyone, but in practice some people's opinion matters more than others. A GC who lacks credibility in the eyes of their CEO, for example, is in trouble.

While there may be some value in trying to benchmark credibility, no-one can measure it precisely.

What we are trying to do with our questions here is emphasise that credibility flows from many places. As a GC, you may be confident, articulate and persuasive when you are with the board. But if they know there are problems with your team, or the directors don't like the external lawyers who are advising you, or if you got something wrong last year, or a trusted member of the executive team disagrees with you, or any one of a hundred other things, your credibility is weakened.

In practice, credibility will fluctuate and vary over time, often significantly. And while there may be some value in trying to benchmark it, no-one can measure it precisely. The three key steps for the GC are:

- To understand how credible they are with their key stakeholders.
- Where that credibility is strong, make sure they understand how to maintain it.
- Where their credibility is weak, devise a strategy to strengthen it.

The last point is the most important: it is a fact of life that we cut the people whom we like, trust or find credible more slack than we do those of whom we think less. Losing credibility is a vicious circle; once people think badly of you, they will find it easier to reinforce that belief than to change it.



Mark Cockerill

**VP Legal – Corporate (EMEA/APJ) and
Head of Global Privacy, ServiceNow**

It's rarer and rarer for a senior role to be just simply legal. We are business owners as well. Equally, functions such as compliance, or regulatory, or public policy, or privacy end up fitting into the legal team framework in many places.

I personally moved from in-house legal in telecoms, with commercial, corporate and regulatory under my remit, to become VP Legal – Corporate (EMEA/APJ) at ServiceNow – but I'm also the Head of Global Privacy worldwide. So although most of the company's legal team, including the GC, is in the US, I'm driving international issues and approaches and also leading worldwide privacy from Ireland, with my different teams spread across the US, Europe and Asia.

People who start out by being afraid will never embed the right culture to go forward.

One reason for leading privacy of a US-listed company from Europe is GDPR. Whatever you think of European legislative bodies and the laws they generate, they do develop the philosophies and core principles very well, which makes it intentionally easier to adopt and follow in other jurisdictions. I've seen this before with telecommunications regulation and I think regulators and law-makers around the world will copy the EU approach, albeit with the full scope of the principle-based methodology of GDPR still being the absolute gold standard.

I do have a wide remit, and therefore I'm hiring heavily in multiple jurisdictions to align with our growth, although good privacy lawyers are getting expensive. Some of my colleagues have questioned whether this is a bubble. My viewpoint is that the market will ultimately calm down once GDPR is bedded down and newer privacy-focused lawyers gain greater PQE, but there is still a whole cycle of international equivalence to work through – so I think the spike will continue for a while.

Waiting and watching these international developments occurring means that we all have to constantly evolve our best practices to make sure everything is set up properly and that we're alive to different regimes and requirements. This is especially relevant for breach response, with endless preparation and dry runs. It's never a complete solution, but if you're well prepared – with tight policy and good communications – it's time well spent – even though you always hope it's wasted time, and that you'll never have to do it for real.

I try to influence business decisions and thought processes from the outset, to make sure international views are accounted for – but also so that local views, in some nations, are not seen as insurmountable. It's important that local nuances are accounted for, but don't jeopardise the bigger picture. Your role is to think bigger and deliver solutions (not just problems!), providing the international outlook, but driving the company's overall goals.

It's easy for lawyers to say 'it won't work'. The easiest thing a lawyer can say is just 'No'. Probably the second easiest thing to say is just 'Yes'. The hardest communication is 'No, but...' or 'Yes, but...'. That means sometimes living outside of the pure black and white and in the grey. In my view that's what a great in-house lawyer does and what differentiates our daily role and business value from external lawyers in private practice. Honestly, my experience is that as lawyers, we can always think of the absolute worst-case scenario, but you must adopt and apply a pragmatic risk-based approach. If you are not doing that, your company is probably not doing very well.

Time to think

I used to be a big believer in just 'let's keep everything moving' and I zoned in on execution and constantly 'doing', but as I've grown as a lawyer, my position has changed. My goal is now to try and spend 20% of my time 'thinking'. This should be about wider long-term projects and goals and concepts like how we can improve efficiency and delivery on a project, workflow, or even as a legal team generally. Thinking regularly about your team, their development and how you need your team to work in conjunction with other leaders and departments is also core.

Whilst corporate, commercial and M&A are probably deep in my blood at this stage, privacy is heavily on my mind at present and driving to raise awareness and always increasing engagement is an ongoing requirement, especially with a business growing so fast and increasing its headcount so heavily across the globe as ServiceNow is at present.

I think of this sometimes as a classic Catch-22. You run internal campaigns and get the business's attention by saying there have been so many notifications and emphasising the size of fines, but that makes people fearful (or cynical about the possibility of such a fine happening – the classic 'Titanic' persona). But truthfully, the catch is that I don't want them afraid.

People who start out by being afraid will never embed the right culture to go forward. I want them to think about it positively – about it being vital to build trust, internally and externally with our customers and their end-users.

I'm passionate about a GC or regional leader's general role in building trust. Everyone focuses on the wider concept of being the internal trusted advisor, and that's important. But you've also got to do your part in helping the customer trust the company overall.

It's not just about doing deals to make money, but about the philosophy and the feeling you are trying to engender. After the first sales engagement, a customer's next contact with a company is likely to be with the legal team for an NDA (or even a full contract!). What sort of attitude will they meet? Is it going to be open and transparent to the extent possible? Are we helping our customers trust us? ServiceNow is a core strategic partner to most of the Fortune 500 – are we doing our part as a legal team to support that feeling of strategic value and partnership?

With regards to teams, my position is that I'll know if I have done a good job developing my team if they go on to become GCs, not if they are still here in ten years' time. I sit down with each of them and ask them to tell me their story: how they got here, their high and low points along the way, what their goals are and what they see as the path to those goals. Then I tell them what I've observed in working with them, and we decide where to go from there.

Sometimes we get fascinating discussions, about developing attributes and evolving abilities and sometimes learning their true passions and end-desires are not necessarily what you imagined, or even anything to do with the law! We also have frank conversations, which are sometime hard – if I have to say, for example, 'I don't think that's in your path' or 'I don't think you can achieve that here'. However, my aim is always to help them develop and to that end it is better to be kind, rather than nice.

I'll know if I have done a good job developing my team if they go on to become GCs, not if they are still here in ten years' time.



15. Do you get feedback on yourself?

Most of us are not our own best critics. We can benefit to some degree from an external view – whether from colleagues, consultants or friends. Sometimes it will tell us things we really didn't know, or force us to confront things we prefer to ignore. In some cases, it may tell us we create a false impression of ourselves through inauthentic behaviour. Either way, the ability to see ourselves as others see us is always valuable.

Personality or psychometric tests – of which the most famous in the business world is probably the Myers-Briggs Type Indicator – may also be useful, although some have been criticised for a lack of rigour and scientific basis. They are widely used in corporates and other large organisations. But if you want to use them to evaluate yourself, you have some advantages over the average corporate user. For instance, you can take several different tests, and see whether the results support or contradict each other.

You also can assess the results of the tests against your experience of the world. Does the picture they paint of you make sense, in terms of your behaviour and beliefs? Some tests are like the horoscopes printed in magazines – so vague that they could mean almost anything, enabling nearly everyone to find something plausible in them. Resist the temptation to 'cherry pick' the results you like and ignore or dismiss the ones you don't.

16. How do you stand out from the crowd?

Perhaps you don't stand out from the crowd. Perhaps you don't want to. Many lawyers don't. But if you want to be seen as a leader among GCs – well, you have to be noticed before you can be seen.

There are many approaches to standing out. It wouldn't make sense for everyone to be different in the same way. You may have a so-called 'USP' (unique selling point), which could be to do with your opinions or expertise or experience or background. You may be the first to do something, or do it in a way no-one else has done. If you work for a household name company, you may stand out because of your association with it.

And, obviously, you may need to do different things to be noticed by different people. Your peers among GCs may be impressed by a great presentation you make in a webinar for in-house lawyers. It won't impress your board, because they won't see it. You might be a real leader in the use of technology in the in-house legal function, but people outside your company won't be impressed unless you publicise it.

If you are happy for people to put you in a box labelled 'GC' and not think too much about you, then you probably don't need to do anything. But if you want them to think about you – and especially if you want them to think about you as more than someone who diligently fills a corporate function – you need to be noticed.



The fact that I was keen to listen to people at all levels in the company made a difference.

*Silvia Bonacossa
General Counsel, Xerox Italy*





Silvia Bonacossa

General Counsel, Xerox Italy

I joined Xerox Italy as an in-house lawyer in 1995 and became General Counsel in 2001.

Since I became a GC the role has changed a lot, for various reasons. In the early days I had much less to do with business strategy, and compliance was a much less important part of the job, although it was always there.

After Sarbanes-Oxley came in in the US, the role of the legal head really started to change. I work for a corporation listed on a stock exchange in the US, so it was very important. Compliance became a much bigger challenge, and my role moved from being a lawyer to being a real general counsel, independent of local management. I have a duty to be much more proactive about ensuring that the Italian business is compliant.

But there are personal reasons for the change in my role too. I naturally have an attitude to the job which is more management-oriented than traditionally legal. I have always been very keen to learn about business processes and strategy. So I wanted to be nearer the business.

One of the best compliments I ever received was when an executive said I was “not really a lawyer” but more of a “business person”.

One of the most important things I did at the beginning was to talk to different people in the company. I spent time listening to them so that I could understand their problems. And that helped me ask the right questions to understand the business.

The fact that I was keen to listen to people at all levels in the company made a difference too. They saw the legal department as less ‘different’ and more aligned to their interest than finance, accounting and other support functions. And they really appreciated that I was willing to take time to understand in depth what their issues were.

There is another advantage to that sort of collaborative approach. Often when people approach the legal department, they ask the wrong question, because they are not lawyers. Or they don’t tell us things that are important, because they don’t realise that they are important. We have to understand their real needs to find the right solution to their problem.

As I said, I don’t report to local management but to the General Counsel function for EMEA, who is responsible for local in-house legal teams. I think this degree of separation from local management is healthy, particularly in terms of making sure there is alignment between the culture of the Xerox business in Italy and the culture of the Xerox Corporation. It ensures that the in-house team is free to advise and take decisions uninfluenced by local management.

In some ways I act like a representative of the corporation at a local level. Having active roles in a number of committees means I am party to the major decisions taken by the Italian company. I am present at board meetings and receive invites to key executive steering committees. I am also a member of the security council and I attend quarterly risk meetings, as well as being part of the disaster recovery team and any crisis management team. Through all these committees I have good access to the key issues affecting the business, and my contribution as general counsel is welcomed by the business. It has also put me in a good position to deliver projects where new policies or procedures are being implemented across the business.

It can be challenging to be a female GC. But I think it is easier now – at Xerox we have a strong diversity policy – and easier for lawyers than perhaps for women in some other areas of business. People accept that we have specific skills, different from the rest of organisation, so it is easier to be considered on the basis of our skills rather than on the basis of our sex. But I’m still aware that women can be excluded from the relationships that some male managers may have among themselves.

And of course it’s important that we’re not seen only as people with legal skills. I have to be comfortable to sit alongside other senior executives and express my view on the business. In fact, one of the best compliments I ever received was when an executive said I was “not really a lawyer” but more of a “business person”.

Your role

17. How does the CEO – or your boss, if your boss isn't the CEO – view the GC role?

This isn't the same as question 12. What people think of you is often not aligned with what they think of your role. And it's quite possible for your boss to think highly of you while at the same time restricting your role in ways you find frustrating and that make it harder for you to realise your ambitions.

For many GCs this is not an issue. Their roles have grown, in ways they find satisfying – or, in a few cases, alarming. A natural expansion into risk and compliance has often led to further growth in contiguous areas, from security to ethics and corporate social responsibility. Other GCs are responsible for corporate functions such as public affairs or HR.

GCs may sometimes find these developments stretching, but they have undoubtedly tended to make the GC a more significant corporate player, with an enhanced profile and status. As well as having additional responsibilities, GCs are increasingly likely to be seen as general corporate counsellors, rather than 'mere' lawyers.

The question for GCs who are still 'legal-only' is: do you want that to change? And if you do, can you devise an approach that will persuade your CEO to change their view of your role – for example, showing that your existing role was structured to reflect circumstances that don't exist any more, or that an expansion of your role would have a clear benefit to the organisation? Or do you take the option of looking for an enhanced role elsewhere?

18. How are you growing your job?

You may not require a formal change, approved by your boss, to increase your involvement in different aspects of corporate life. Simply being in the right place at the right time and showing willingness may be enough to get you involved in new projects, which can often solidify into permanent mandates. Many GCs have found themselves doing new things during the pandemic.

However, some caution and focus is necessary – not least because you are probably already busy enough. You should probably be seeking to identify and focus on what you need to do to progress towards strategic business counsel status, and what new remits or responsibilities will help you achieve that.

There are other possible reasons for growing your role.

You may want to take on something else simply because it engages your interest, or because you expect it to be useful in an anticipated future career move. In a few cases it might actually make your job easier, by bringing together complementary corporate functions. But in most cases, a GC will be looking to grow their role in order to ascend the GC Value Pyramid that we described in our first GC report, *From in-house lawyer to business counsel* – see next page.

19. How do you handle 'wearing different hats'?

A GC's various roles and duties may sometimes come into conflict. Most obviously, in some jurisdictions, GCs may be not only in-house lawyers but also officers of the court. They have duties to their internal clients but also duties to the company, and probably to its shareholders. They have to perform that difficult balancing act of maximising opportunity while optimising risk. And they need to be ethical as well as commercial.

The GC who wants to be seen as authoritative and commercial can't say "on the one hand ... on the other hand." They have to provide a consolidated, blended, composite opinion, bridging all the contradictions they face. If they find themselves in a situation where that's impossible, this may be a warning sign that a particular course of action is inherently untenable, or that there is the danger of running an ethical red light. (See questions 46, 47 and 54 for more about ethics.)

20. What single thing would most increase your contribution to your organisation? And what would most *easily* increase it?

This is an opportunity for a little 'blue sky thinking'. Perhaps not truly blue sky – it should ideally be something practical – but certainly a chance to think beyond your usual parameters. Because you are probably already doing most of the good things that might fall within those parameters.

If you are hugely fortunate, the answer to both parts of the question will be the same, and the easiest win will have the biggest impact. But it's far more likely that they will be quite different, and that you will have various additional options.

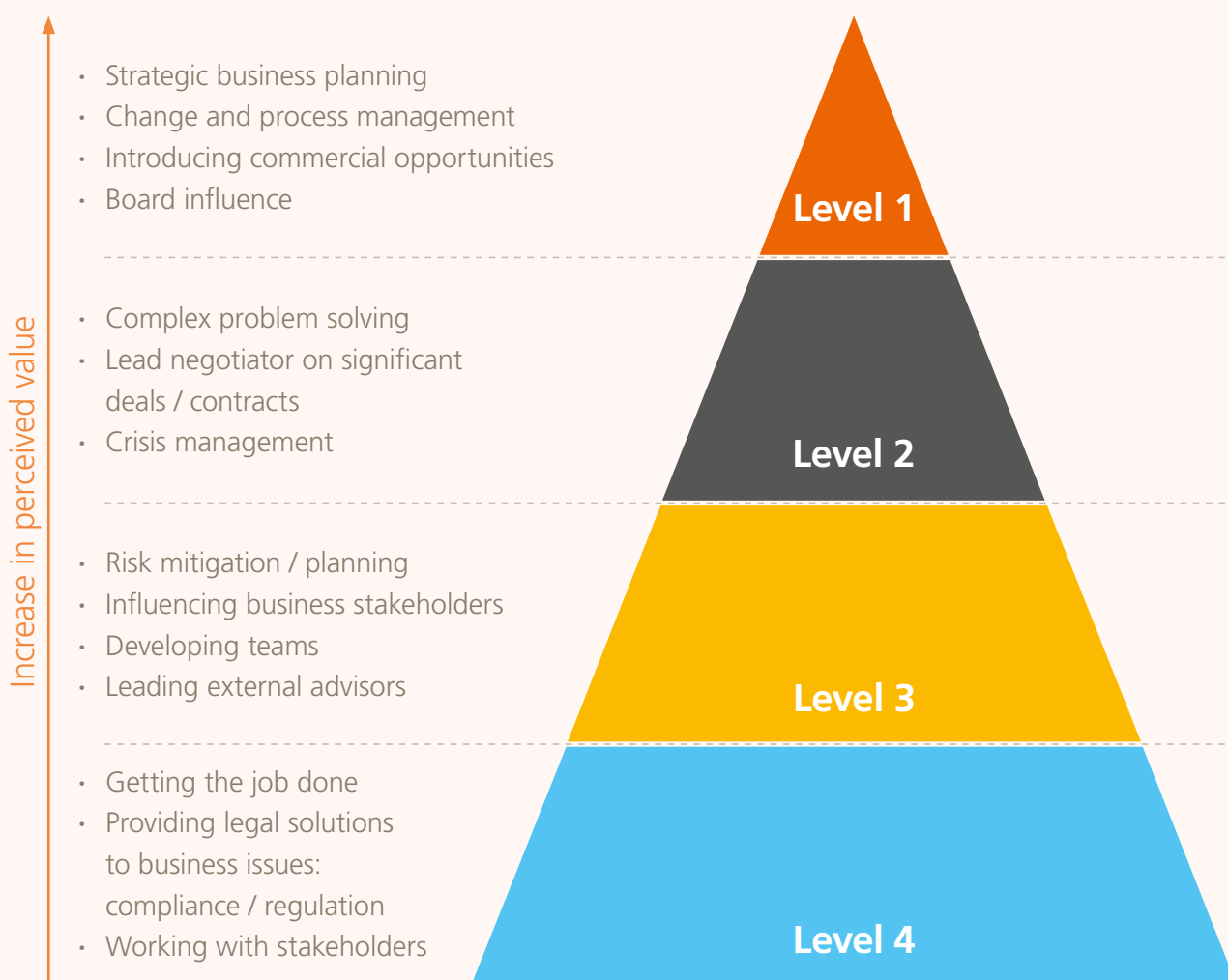
The greatest value in considering the question is not the identification of those two things, but the brainstorming process itself, which has the potential to generate a great variety of ideas for growth, clustering around the concepts of value and ease.

The GC Value Pyramid

We developed the GC Value Pyramid a decade ago, to help GCs who wanted to review the value of the work done by the legal department, and its relationship to their own status in the business.

The pyramid divides tasks into four levels, according to the value they provide for the business.

Many of the GCs we talk with still find the pyramid useful when considering their role.



Source:

CMS 2010 report *From in-house lawyer to business counsel*



Marta Cruz de Almeida

Head of Litigation, Galp

I joined Galp in 2013, after seven years at a regulator and six years at Linklaters in Lisbon. I'm based in Lisbon but I handle international litigation and arbitration as well as domestic work. As an energy company, we have a lot of business in Brazil and Africa.

As an in-house lawyer I feel I make a difference every day – much more than I would in a law firm. I give advice and half an hour later I know if it was good or wrong. And it's much easier for an in-house lawyer to be close to the business and know what's going on. You're always more removed from that in private practice. It's simply impossible to have all the information and be as familiar with the situation when you're an external lawyer.

As an in-house lawyer I feel I make a difference every day – much more than I would in a law firm.

Of course that doesn't mean I don't use external lawyers. If I want very specialist advice, or don't have the skills or time to get something done internally, then I'll go to an external lawyer. As an in-house lawyer I can't be as specialised as I can in private practice. The external and internal are complementary.

My role is much more about pre-litigation work than it might have been a few years ago. People are much more focused on that aspect of the business. I have to give opinions on M&A and other transactions, for example, about enforceability, guarantees and similar issues. People want to know from an early stage whether there are litigation or competition issues in a deal. It's very much a question of risk mitigation: that's what early stage involvement is about.

Another change is the use of technology. We use some already, and I hope we will soon use more. We are trying to automate as much mass litigation process as possible – with settlements, for example. We are also using technology to share information about cases. I've tried to make it as easy as I can for external lawyers to act without constantly talking to us, and for the business to know what's happening once proceedings have started.

If the current status of ongoing litigation is available online, then my team don't have to answer hundreds of email enquiries per day. An important part of the in-house lawyer's role is to keep the business informed, but being available all the time to everyone can be really challenging.

I have four people working for me in litigation and there are over 20 in the whole legal team. One of the big issues for us is how we retain talent. We need to be more flexible to stop people going to join law firms and be able to benchmark ourselves against them. So other sorts of flexibility come into play – particularly empowerment. If we don't give our team empowerment, and make them feel special and important in the organisation, there's not much else!

Obviously people report to me, but I give them a lot of autonomy and make the hierarchy as flat as possible. I try not to be too hands-on, and I try to be positive and constructive in critiques. I try to show them I have confidence in them. For me, trust is one of the most important things.

I make them responsible for areas and matters, and make sure that everyone sees them as responsible. I try to let people get involved with work they find interesting, and develop their own relationships with business teams. They can focus on particular issues in a way that you can't if you're in a law firm.

If you're connected and know what you're doing you are a change maker.

We scope out informal areas of responsibility too. It's a cliché, but I try to lead by example and do a bit of everything, both small things and bigger things. We do some cases ourselves, and we go to court. Even me. It's important for the team to be involved.

I am fortunate enough to work in a place where, if I'm interested in something, I have the tools to make a difference. Not everyone can say that. If you're connected and know what you're doing you are a change maker.



I try to lead by example and do a bit of everything,
both small things and bigger things.

Marta Cruz de Almeida
Head of Litigation, Galp



Your skills

21. Do you have the soft skills that the board-level counsellor needs?

And what are those skills? You could draw up your own list, which might be influenced to a degree by the gender and age balance (or imbalance) on the board of your own company. But we'd suggest that the necessary skills are a collection of opposites, and that the GC needs to find the right balance – or build a bridge – between them.

For example, the GC unquestionably needs to be capable of tact and diplomacy. But they also need to be plain and tough enough to lay down a red line when that's necessary, and to be clear that what they say should carry more weight than the average opinion.

The GC has to be able to listen – but also needs to be able to speak forcefully at the right moment. They have to be able to influence people, both to do things and not to do things. They have to be capable of being both balanced and decisive.

The list goes on, and it's a challenging list. But being a true counsellor at board level is at the heart of what it means to be a GC, and an in-house lawyer who aspires to be a real, strategic counsel to the business will need to develop these skills.

22. How financially numerate are you?

As we wrote in our *Reaching new heights* report, "you do need to be good with numbers these days." The era of GCs who felt comfortable about their inability to read a balance sheet is over almost everywhere. And that era has not actually lasted as long as some GCs may think. When the profession of general counsel began in the USA in the late nineteenth century, general counsel were often expected to advise on business and finance as well as the law. Only in the 1930s did the idea of general counsel as an exclusively legal advisor come to predominate.

It's increasingly common for GCs now to have an MBA or other business qualification. Those who don't need to be able to demonstrate that they are comfortable with all the key aspects of their business's financial data (as well as being able to manage their departmental budgets effectively). And they need to know what makes the business a financial success and understand how their advice is likely to affect the bottom line.

A GC who does this is not trying to second guess or supplant the CFO. We know of a few GCs who combine their role with that of the CFO – mostly in the USA, and mostly in smaller companies. (We also know of some, including GCs in Europe, whose roles include other financial responsibilities, such as group treasurer.) But on the whole the GC doesn't need to behave like a CFO – not least because the actual CFO is going to do it better. They just need a firm understanding of the key financial points, processes and methodologies.

23. Are you able to contribute to the conversation on wider commercial issues?

For Liudas Basiulis (on page 24): "When people ask your opinion on a range of different things – not just law, but market reaction to something, or where would be a good place to build a gas station – then that's a compliment that shows you are trusted." Many other GCs have told us that they feel they have passed some sort of key test, or achieved an important measure of acceptance, when their opinions have been asked on purely commercial issues, as well as legal issues and issues with legal aspects.

It's your perspective as a business-minded lawyer that makes your contribution unique.

In question 6 we asked whether you were a confident business person, and that's relevant here – but it's not quite the same point. The GCs with whom we've discussed this felt that their knowledge of the company's own business and the market was key, as well as a commercial viewpoint. But, for many of them, it was also important that they were contributing as a GC. As Eduardo Dominguez-Adame Bozzano says on page 52, "a good way to describe an in-house lawyer is as a specialist in the business and a generalist in the law."

For the GC, being able to contribute on commercial matters doesn't simply require a commercial skillset. It requires a genuine knowledge of your company and its competitors, of the demand for your products or services, of the products or services themselves, and of likely developments in the market and its regulation. It also requires your GC-ness. The CEO is surrounded by business people, all of whom will be ready to offer their opinions, but it's your perspective as a business-minded lawyer that makes your contribution unique.

24. Are you capable of major project leadership?

Managing projects is harder than it sounds. If you're in any doubt about that, compare the number of projects that come in on time and on budget with the number that do not.

Many GCs discover they can more or less get by without having to manage projects. Once you are running a department of a certain size, or if you are in an organisation which has dedicated project managers, you will probably find there is someone who can do it instead of you. In fact, in any medium-sized or larger legal department, there probably *ought* to be such a person. However, you will still have to manage them, and know what questions to ask, and what problems to watch for. The buck will ultimately stop with you. For a GC to have some project management skills – which are, incidentally, highly transferrable – can only be a good thing.

But our question was actually about something slightly different from project management. It was about project *leadership*. A project manager will probably be a leader themselves, running the team. However, as a GC, you need to take that several levels up. You need to be an advocate and ambassador for any major project. You may need to persuade your boss or the board of its merits. You need to find funding for it and make sure people buy into it. You need to take executive decisions about its value to the legal function and the company as a whole. You may have to resolve conflicts within the project team. If things go badly wrong, the decision on whether to pull the plug will be yours. That's just some of what it means to be a project leader.

25. How effective are your conflict management skills?

Here are two things to think about.

- Do you make the most of your conflict management skills? Lawyers are often good at conflict management, and there are many circumstances in which it is valuable for a company to have access to someone who is able to arbitrate or mediate. A GC's independence may sometimes be an additional attraction. Do you get involved on those occasions – and if not, should you?
- Do you sometimes fall into the trap of using your conflict management skills to suppress differences which would be better resolved? Good management doesn't mean always being emollient. The best managers know when bringing a conflict to a head, and resolving it one way or another, is the best long-term solution, even if it causes short-term problems.

26. Do you have the managerial skills you need?

If you don't, there are a thousand consultants who stand ready to advise you. We are not among them, and we don't pretend to cover the topic in any depth here, although we'll look at team management in a little more detail in the section on 'Your team' below. But it seems worth asking how good you are at managing your most difficult team member: yourself.

Time management, workload management, career development – they're all often easier to manage for other people than to handle in a sensible, balanced way for yourself. Of course you will have a boss who is at least nominally your manager. But at GC level, they will probably be managing such aspects of your work in only the most general sense, usually trusting you to sort them out on your own.

There are GCs who have run legal departments effectively – often with the help of a good second-in-command – but who have been less successful in managing their careers, their work-life balance and their personal satisfaction. If you think you may be one of them, it might be worth reading (or consulting) one or two of those consultants.

27. Have you audited your skills and drawn up a personal/skills development plan?

This is what this section boils down to: if you don't have the skills you need, how will you get them? There are always workarounds – faking it, hiring someone to cover areas you can't, doing something acceptably rather than well, or just avoiding things you're not comfortable with. But none of those tactics will make you a better GC, and none is a long-term solution.

Some lawyers find it hard to admit that they lack a skill or are not good at something. A GC who can't do that won't be comfortable with the whole idea of personal development, let alone the actuality of it. If you are one of those lawyers, it's a bridge you need to cross.

Some people will *take* opportunities for personal development – perhaps if those opportunities are offered company-wide, for example – but won't *pursue* them. That's better than nothing, but if you don't pursue what you need personally, you will never get the best outcome. And if you really want to succeed, you should pursue the hard opportunities just as assiduously as the easy ones.

Other people are pragmatic about assessing their individual needs, and happy to embrace the process of personal development. If you are one of them, congratulations!



Liudas Basiulis

Head of Legal, Procurement and Compliance, Neste Lithuania

I'm the only lawyer at Neste in Lithuania. I've been here for seven years. Before that I was in-house at a major Baltic retailer, and before that in private practice.

As well as legal, I'm responsible for procurement and compliance, and I'm on the management team. I was formerly on the board, but a reorganisation separated the board and the management team, and of course I went with the latter.

In some countries Neste lawyers are also responsible for HR, but that's not the case in Lithuania. We don't have the resources that would be needed to manage that too.

Neste is headquartered in Finland, and most of the 15-strong in-house legal team are there, with another three servicing the Baltic states, plus one in the US and one in Russia. I report to the GC in Finland, as well as to the general manager of the Lithuanian business.

Neste positions itself as a very innovative company – a leader in renewable fuels as well as oil. This ideal of innovation is also transferred to every level of our operation. For example, we now work in more innovative ways, using Google. We can share our documents online, in the cloud. We've transferred all comms from landlines to Google Hangouts, to make communication easier.

However, being innovative doesn't mean being reckless. We also have a very strong corporate culture and some traditional company values. A key value is 'safety first', in every sense. Whether it's work safety on site, or whether it's legal safety in an area such as data compliance.

We always follow the principle of 'safety first' in decision making. When we have to strike a balance between business and legal considerations, we ask whether a business decision is 'safe' in all aspects. And we try to avoid grey areas – we try to put some informative colour on the decision!

I'm a big fan of the Dakar rally. Neste were supporting one of the drivers who was always chasing the top slot, but rarely finished the race. Then in one race he got caught in a sandstorm and couldn't see. So he decided to stop and wait for it to die down. And he's now in the top 10.

What I take from that is the idea that, when you're in a 'blind' scenario, it's best to stop and think and consult, rather than just driving on. There's sometimes pressure to make an immediate decision, but as we get more experienced we learn we often don't have to decide at once. We can stop and think for a short period – practise mindfulness, if you like. And in most cases, some thinking will make a grey situation more colourful, and probably safer.

Developing as an in-house leader

Neste encourages learning and individual development. We have corporate online training, regular ethics programmes etc. But we can also choose ourselves what competencies to develop, in an annual development plan. That might include things like external training, learning a language, or developing negotiating skills.

I think there are three main areas to focus on if you want to develop as an in-house legal leader and a trusted and reliable advisor.

The first is to develop your professional knowledge of the areas of law that are relevant to your business. The company needs to know I'm strong on things like retail, real estate and employment. That means they can respect and trust me.

The second is to increase your understanding of the business. If you're the GC, you're only going to be respected by the business if you can speak to people in the business on an equal basis. And it's not only your own business: you need to understand the company's competitors, and you need to understand the global and local markets. When people ask your opinion on a range of different things – not just law, but market reaction to something, or where would be a good place to build a gas station – then that's a compliment that shows you are trusted.

The third way to improve as a leader is to deepen your emotional or soft skills, so that you can understand and influence people better. When you make progress in understanding interpersonal relationships, and how people react and behave in negotiations, then it's easier for you to influence them and persuade them to believe you. Which makes it easier to bring them onside and conclude your negotiations successfully.



In most cases, some thinking will make a grey situation more colourful, and probably safer.

Liudas Basiulis
Head of Legal, Procurement and Compliance, Neste Lithuania



Influence

28. How much do you influence people when you're just 'being yourself'?

Maybe that's hard to judge. And it may be different in different situations – for instance, you may be more influential one-to-one than when you're in a group. But any GC seeking to become more influential needs to be able to look at themselves honestly and decide this, because it's the baseline from which they are working.

You might also want to think about whether you're exactly the same person when you're 'just being yourself' one-to-one or in a larger group. Or with colleagues as opposed to old friends. If you can see differences, you may be able to find strengths or opportunities in that variation.

29. Are you a persuader?

No, that's not a typo. We mean are you a 'pre-suader': do you do the necessary groundwork before trying to persuade someone of something?

The concept of the pre-suader was formulated by Dr Robert Cialdini, some of whose ideas contributed to our report on influence. He argues that you can prepare people to be receptive to a message before they experience it. In his formulation, "to change 'minds' a pre-suader must also change 'states of mind.'" We can't go into all Dr Cialdini's ideas here, but if this little piece of persuasion has caught your attention, you may find his many writings on the subject of influence to be interesting.

30. Do you speak the same language as the business?

This is not a question about commercial attitudes or actions, but about a particular commercial style of communication.

The language of business has various subsets: the dialect of the Financial Times or Handelsblatt is not quite the same as that of the boardroom, which in turn differs from that of the sales desk or the shop floor. Individual industries – even individual companies – have their own specialised jargon, acronyms and buzzwords.

A commercially-minded GC will be familiar with the common vocabulary, but the really smart commercial GC will also be attuned to the various dialects of the business, and the key words and concepts that determine acceptance. It's much easier to be influential when you speak the language of the people you're trying to influence.

31. Do you tell the business it can't do things, or persuade it not to?

The answer may partly depend on your situation. You may not be able (or feel able) to insist that something must not be done, so your only option may be persuasion. Conversely, you may feel you have to insist, because it's an important point, but you don't think persuasion will work.

You can prepare people to be receptive to a message.

The 'perfect' GC in the 'perfect' company would have to do neither. For them, merely advising against a particular course of action would be sufficient to kill it. If you're a GC in that situation you may count yourself fortunate. For the rest, we'd suggest that persuasion is usually a better long-term option than insistence.

But in asking the question we were not so much interested in reaching that outcome as considering what your preferred approach says about you. Are you, by nature, more of an insister than a persuader? Are you happy to spend time and emotional energy winning people round to your point of view, or do you want to 'lay down the law' and move on to the next point? There are merits in both approaches, and most people in fact combine them to some degree, but for the GC who wants to be a successful bridge builder, persuasion is clearly better. And, crucially, both approaches rely on your having achieved something: either the status, authority and credibility to insist, or the soft skills necessary to persuade.

32. How effective are you at dealing with corporate blockers?

We don't mean the blockers in the legal team – although there may be some of those, especially when it comes to implementing change. We mean the people in different parts of the organisation who try to avoid involving the legal team in what they're doing, or persist in following their preferred procedures rather than yours, or who don't give you the information you need, or who refuse to co-operate in other ways.

We asked how effective you are, rather than what your method is, because a successful GC will have a variety of methods. Different people block for different reasons, and the key to your success as a GC is understanding what their individual reasons are.

They could be anything from insecurity to a wish to conceal unethical activity. Entrenched habits, stubbornness, prejudice, stress, scheduling pressure – a wide variety of factors can lead to very similar patterns of behaviour.

When this happens, the GC may be like a doctor, first diagnosing an ailment and then finding a cure. Although the doctor may require an understanding of the patient, the focus is on treating the illness not judging the patient. Likewise, the GC's aim should be to find the cause of the behaviour and then change it. If the person, rather than the behaviour, is seen as the problem, in all likelihood the behaviour will continue, and the situation may even deteriorate rather than improving.

33. If you're the top legal person in your organisation, how do you influence the board?

One of our previous GC interviewees found it "difficult to see how a GC can do their core role effectively if they do not sit alongside the rest of senior management on an executive committee, and at least attend board meetings, even if they are not on the board itself. These bodies are where the strategic direction, culture and attitude to risk for the business are determined, and where major decisions are taken."

A unique aspect of the GC's role within a company is to speak truth to power.

His view makes sense. There are various routes by which a GC may attend board meetings, not least by also acting as company secretary in jurisdictions and sectors where that is possible – although we have heard it argued that a GC who is also company secretary may be less influential in meetings than a separate GC and company secretary would be, and that GC should in fact press to attend board meetings in their own right. (The situation is more complex in jurisdictions which have two-tier governance systems, where the GC is perhaps more likely to attend executive board meetings but rather less likely to attend meetings of the supervisory non-executive board as a matter of course.) According to the ACC in their 2018 paper *A Seat at the Table: The State of General Counsel Influence in Europe*, 73% of general counsel globally "almost always" attend board meetings, but in Europe, only 57% do so.

Where a GC does not attend the board, they may have to influence it via a proxy – typically the CEO. Or they may put papers before the board, which may sometimes result in their being invited to attend. Or they may – and this is clearly much more difficult – attempt to raise concerns with individual directors.

However, all such tactics are poor substitutes for attending board meetings – and, potentially, meetings of board committees (e.g. the audit committee).

You need either the status, authority and credibility to insist, or the soft skills necessary to persuade.

Silvia Bonacossa sets out the advantages clearly on page 17. "I am present at board meetings and receive invites to key executive steering committees. I am also a member of the security council and I attend quarterly risk meetings, as well as being part of the disaster recovery team and any crisis management team. Through all these committees I have good access to the key issues affecting the business, and my contribution as general counsel is welcomed by the business."

Getting into the boardroom is the key consideration for the GC seeking influence in this area, but it may not be the only one. The GC probably has significant opportunities to develop a working relationship with the CEO and others in the executive management team. Building a relationship that facilitates influence with non-executive directors, whom the GC will probably only infrequently encounter, can be more challenging.

The CEO and other members of the executive team may also be keen to shape and control the board's agenda. The GC will need to understand whether they can raise difficult issues at board level without losing management support in other areas. They will also always have to be mindful of the potential liabilities of directors, as well as their own duties to the company and its shareholders (whose interests may not always be perfectly aligned with those of the board and its directors).

The pandemic has made access both easier and harder for GCs. Some have been a key part of their business's emergency response team: others have found access even harder as they work from home or are unable to travel to other offices. Video conferences can be great levellers, if everyone has to connect in the same way – but you still need to be invited to attend in the first place. And they offer few opportunities for 'a quiet word' with a particular executive or director you need to influence.

A unique aspect of the GC's role within a company – at least within the average listed company – is to speak truth to power. When they don't have access to the key sources of power, or that access is compromised, then that aspect of their role is compromised too.

34. How strong are your relationships with the other key people in your company?

It's easy to focus on the 'top' people: the CEO, the CFO and the like. But if you think about the organisation – where the real power resides, where the influencers are, and (very importantly) where the legal risk is distributed – you might come up with a much broader supplementary list of people with whom you should build good relationships.

Having strong connections with a variety of your colleagues is always beneficial, not least because it gives you more options in handling people with whom you don't have a relationship, or where you have a bad relationship you've been unable to repair. Building such connections can often fall victim to time pressures and other commitments. It is worth making time to focus on.

35. Do you use email too much?

We drafted this question before the pandemic struck. We considered deleting it – after all, it was argued, isn't email more essential than ever? But we decided the question still had value. Because even at a time when remote working has become common, it is still possible to use email (or to text) too much.

So: do you use email too much? The honest answer, for virtually everyone, is 'yes'. Email is convenient. It gets things in writing. It's easy to communicate with multiple people at once. It's useful when working across time zones. It's handy for evading difficult conversations. There are all sorts of advantages.

But the wise GC doesn't forget that there are can also be advantages in connecting verbally. On the simplest level, it makes human contact easier and helps the sort of relationship-building we were discussing in the previous question. Not every exchange needs to be – or should be – documented. There are times when a brief conversation is better for solving a complex problem than a lengthy exchange of messages. And while a congratulatory email or text is always welcome, there are still some people who appreciate a call more – or even a handwritten note or other more personal gesture, not least because these days such things are so scarce. (They are also harder to arrange if people are working remotely, and so perhaps even more meaningful.)

We would be prepared to bet that nearly everyone reading this report gets more electronic communications a day than they really have time to deal with. We've mentioned the need for GCs to be able to spend time on 'big picture' stuff. Email, texts and social media can all eat up that time. GCs who want to plan and strategise need to block out time to spend offline.

36. How well do you know your colleagues?

It's always potentially difficult for the head of a department to form friendships with the people they manage (or report to). Some distance and authority must be reserved. But, given that friendship is the most common way of getting to know someone, how does a GC develop a deeper understanding of their colleagues?

A GC needs both the right attitude and the right opportunities to succeed in this. The attitude is straightforward: the GC must have the time and the desire to get to know people. They will certainly notice if you see it as a chore or hate doing it. You might want to consider what we have to say about authenticity, in question 41 below.

Opportunity may arise through day-to-day work and activity, or through socialising and attending events. But even before the pandemic and requirements for distancing, some traditional opportunities to socialise with colleagues, such as after-work drinks, were coming to be seen as problematic because they may effectively exclude some members of the team (and, in the case of drinks, may have the potential to lead to inappropriate behaviour). Not all GCs will wish to stop such social activities, but the wise ones will – formally or otherwise – at least undertake some risk mitigation.

At the time of writing, we have seen various attempts to reinvent office-style interactions for the era of the pandemic, ranging from online karaoke and the 'virtual pub quiz' to 'video coffee mornings' and streamed Pilates sessions. Probably none are as good as the real world social activities they emulate. But they may be better than nothing – and at a difficult time, when some work patterns and relationships may be under great strain, they might even be more valuable than real world events have traditionally been.

GCs who want to plan and strategise need to block out time to spend offline.

Perhaps the most important point is that no amount of socialising or bonding or team building will help a GC understand their colleagues if they lack the tools that are necessary to form that understanding. In particular, GCs without what is now generally called 'emotional intelligence' will struggle in this area. Like other skills, emotional intelligence can be learnt and improved, and GCs who would like to improve theirs will easily be able to find a mass of material on the subject.



Aneta Martišková

Group Compliance & Process Manager, Solek Holding

Aneta spoke to us in her previous role as Head of Legal Compliance & HR at Glencore Agriculture Czech.

When I finished my legal studies I was already at Glencore Agriculture, working in a junior position in risk management. They gave me the chance to become in-house legal counsel, reporting to the CFO.

The European business legal environment has been changing, so there was a lot of change in the business too, and my responsibilities grew to include areas such as HR, GDPR, compliance and back office. I started to be more like a GC, reporting to the CEO. And last year I became an executive director, reporting to the CEO and head office in Rotterdam. Today I'm part of the management, represent the company, and serve on bodies like the Czech Chamber of Commerce, Chemical Association and the local American Chamber of Commerce.

Creating a team means coaching a team.

People have a different image of an executive director and what the executive director's roles and responsibilities are. I've been accompanying our traders to meetings for years, but the discussions are different now. I was at a meeting with a big Czech university, where they said 'get your legal team to prepare a contract' and I said 'I can do it myself'. They were surprised to find that an executive director had legal skills. People don't see lawyers as executives or executives as lawyers.

Of course, KPIs divide opinion. There's always a debate about them, because it's difficult to measure performance. And it's difficult as a GC to have KPIs, because you can't influence whether the company is sued, for example. The strategy is to find out the most effective solution from all sides particularly from the cost side. Then budget becomes the only measurement which GCs can have.

I have a team of four, working in areas for which I'm responsible, such as executives covering HR, back office and projects. But in legal I'm by myself, working with external counsel. So I need to know the Czech market in lawyers, and the different international firms – who specialises in what.

Having started at the bottom and moved up, I have a good knowledge of the company which helps me to find out quickly the solutions. I'm kind of a translator and transmitter between the business and external lawyers.

If we have problems in the business, I take information internally and transfer it to an advocate, who sends me the outcome. I manage the process to be business-effective and cost-effective.

A lot of GCs start as I did, as in-house counsel on my own. That's how the role of in-house counsel has developed in many places. But over the years there has been so much more legislation, including at a European level. There is so much work to be handled by in-house counsel now, so they have had to become managers, because they have had to create a team, which means coaching a team. So the in-house counsel becomes a manager now, and in modern companies more likely to move to senior management. GCs now need to have management skills and soft skills.

As a lawyer you are also responsible for the reputation of the company and all its issues. So you are responsible for things you can't predict. If you are an advocate you can focus just, for example, on a contract, but as a GC you have to make really quick decisions considering contracts, impact, reputation, business relations etc. And you can't know everything. So you evaluate the risks and find out the information very quickly. It's about soft skills and management skills, and not being afraid to take decisions or make mistakes.

It's good for young in-house lawyer to start with technical legal skills, of course. But if you want to be in senior management as an in-house lawyer, you have to find a way to move far beyond the simply legal. Don't underestimate emotional intelligence, which can help you to lead the team. A good leader should have charisma, too, which is something you can't get at a university.

Having a good team around you is very important for your development as well. As a senior manager you need to spend time on things other than hands-on work, such as strategy. If you don't have a team at a certain level, you don't have time to be a real senior manager, because you end up doing everything yourself or micromanaging team members. The sign of a good team is that when you are not in the office then everything is managed even better than when you are.

Businesses value sound advice – which is not always the best legal and technical advice. A senior in-house lawyer should be the person mitigating risk. It makes you more efficient as a GC, and also better able to be part of senior management.



Businesses value sound advice – which is not always the best legal and technical advice. A senior in-house lawyer should be the person mitigating risk. It makes you more efficient as a GC, and also better able to be part of senior management.

*Aneta Martišková
Head of Legal Compliance & HR, Glencore Agriculture Czech*

37. Who do you meet with or call regularly, apart from your manager and the people you manage?

How you answer this question should help you form a clearer view of your relationships and networks within the business. You might also like to look at the length as well as the frequency of meetings and calls, and any difference between scheduled and informal contact. How does that data correlate with the seats of power within the company, and your areas of interest and activity?

It might also be interesting to look at how much email correspondence you have with the people to whom you most frequently talk. If you are talking to people often but rarely emailing them, or emailing them often but rarely talking to them, what accounts for that? What does it tell you about your relationships in the business? How much of the variation is your choice, and what motivates that choice?

38. Do you run good meetings?

Do you pay enough attention to agenda, format etc when you are chairing a meeting? Do your Powerpoints bore people? Do you involve everyone, as opposed to letting the more forceful attendees steer the meeting? Thanks to the pandemic, remote access etiquette has developed to be more inclusive, but will you ensure that it remains inclusive when some attendees are gathered round a table but others are still dialling in – will you still make sure they are fully included in the discussion? Do you ensure that meetings conclude with clear and promptly minuted action points? Do you aim to have fewer, better meetings?

A good meeting can result in real achievement and higher morale.

These are all pertinent questions, and we could have added a dozen more. Many of us groan at the number of meetings we have to attend, and how much time is wasted in some of them. But a good meeting can result in real achievement and higher morale. If you don't already have the skills you need to run good meetings, it is worth developing them. And if it is worth taking time to attend a meeting, it is worth taking time to plan it properly in advance.

One final question: does your participation improve the quality of the meetings that you attend but don't run?

39. Are you a good networker, both within and beyond your company?

The value of networking is now well understood, but many people are still hesitant about it. Others are happy to connect with new contacts via social media but less comfortable with, for example, networking at conferences or corporate events. When we polled GCs on issues around the topic of influence, a few years ago, networking more effectively was identified as one of their most common influencing challenges.

At the moment, of course, most traditional networking opportunities are on hold, but some at least will return, and people will get increasingly creative about developing alternatives. Networking will not go away.

GCs need to network to promote themselves and their businesses, and to make useful contacts outside the business. They also need to network within the business: not only with their peers in other parts of the business, but also with a variety of stakeholders.

Fortunately, if you're not good at networking, or not confident about it, there is plenty of advice (and potentially mentoring) available, as well as trainers and coaches who can help you improve. If you are a reluctant networker, you need to start by accepting that it has become a key part of the GC's job. The time you invest in connecting with people will pay dividends.

40. Have you taken all the available opportunities to learn how to enhance your charisma?

As we wrote in our 2017 report for GCs: "Charisma is an intensely personal thing. We each make our own, using the ingredients we're given – or born with, if you like – but also using other ingredients we find for ourselves."

Some people argue that charisma is a 'given' and cannot be enhanced. We disagree. Some aspects of it may be innate, but many others can be acquired or changed. You can, for example, learn how to improve your body language or your speaking style, and many other attributes that can modify the effect you have on people.

We would argue that, if you are – or aspire to be – a leader, then your charisma is an issue, whether you like it or not. It's a key component of leadership and influence. You owe it to yourself to think about how charisma works, and to understand and build your own charisma, as part of your personal brand.



Siegfried Schwung

Siegfried Schwung spoke to us in his previous role as the General Counsel and Corporate Secretary of KUKA.

I became General Counsel at KUKA in 2010. Before that I had worked in-house at Daimler Chrysler in several roles, including one in the US, and also in private practice for a German law firm in Singapore.

KUKA is a provider of industrial robots and solutions for factory automation. It's a lean organisation, but as the business has grown I've had to grow the size of the legal department. I now have about 20 professionals worldwide reporting to me. There are about 40 people in the team altogether.

When I arrived, we only had one person in the US and one in Hungary. I've increased our numbers in both countries and also established a team in China and recruited someone in Switzerland.

I'm in favour of lawyers sitting locally. They need to be in the same time zone as the people they're serving – ideally, they should be in the same office, to interact with their colleagues. People often like to just walk in and ask for legal advice. If you're not there, they can't walk in. So wherever there is enough work, I will place a lawyer. For reporting, they have a solid line to local management and a dotted line to me.

It's not easy to find the right people. They need the confidence to work alone, but they also have to understand their limits and know when it's time to touch base with central. I don't want to be called every day, but I expect to be called if it's necessary.

You have to empower the local teams as much as possible. I make sure they are called GCs or whatever, to give them more authority in the local business. But they all belong to the central legal department – we want to be 'one chain'.

I have to be credible as the leader of that chain. You can only be a good leader for your staff if they can see that you are well-positioned, otherwise they are not sure that you have the support of management.

I have encouraged some ambitious people to move out of the legal department into other parts of the business.

I report to the CEO, which I think is important. It guarantees the independence and neutrality of the legal function. So in an organisational sense I'm credible. But I fully admit that in some areas of law I'm not an expert. My staff may be deeper into a subject than I am. If I'm advising senior people and one of my staff has more expertise than me in a particular area or is the person who has done the work, I will take them with me and acknowledge them. They can advise top management too. They need to know that they work for the company, not just for the GC who presents the results under his name.

I try to bring people on in other ways too, but if you have a fixed hierarchy then it can ultimately be hard to retain good people. I strongly support moving people abroad, because the GCs in other countries have additional responsibility. But we are not large enough to offer very many opportunities, and you have to be honest and accept the fact that people sometimes need to move on.

I have also encouraged some ambitious people to move out of the legal department into other parts of the business. I have to fill the position again – but it's a good opportunity for them. They have a better chance to move up the career ladder.

The biggest challenge for us is probably regulation. There are so many new laws and regulations that we need to keep abreast of and observe. I need to be able to guarantee that I or my staff have seen everything. It's one area where the expertise of outside counsel is still important. As in-house lawyers, we cannot be experts in everything.

Boards are much more interested in compliance these days. They want someone to give them comfort that they are doing it right. Before, this was more common in the US. But it's becoming the case in Europe too as the regulatory environment changes. So companies want a good in-house legal department to help them avoid sleepless nights.

There used to be more of a distinction between theory and practice. People would say: "Well, we always did it like that and nothing happened." Even if they weren't totally abiding by the law. But, more and more, theory and practice are becoming the same. We are moving closer to a US-style system.

41. Are you authentic?

We would argue that authenticity is an important aspect of charisma. In some ways it's the most personal aspect: the part that can't so easily be modified. It's become a cliché that the problem with authenticity is how easy it is to fake. But that's both simplistic and cynical. You can't fake it forever; people are usually smart enough to see what's inauthentic if they're exposed to it for any length of time. Furthermore, for you as a GC, authenticity is one of the guarantees of your ethical engagement and independence.

Authenticity also means focus. It means bringing yourself completely into a situation. By definition we are all authentic, at least some of the time, but we can be most successful when we find a way to be most completely ourselves within the environment and parameters of the business. Tom Kilroy, who at the time was GC and acting CEO of Misys, put it very simply in one of our previous reports: "You need to remain authentic to yourself, but be prepared to adjust your behaviour to suit the person and the situation." The ability to do that is one of the traits of a leader.

The pandemic has seen many GCs mixing their professional and domestic lives to an unprecedented degree, with home working and domestic video calls becoming an accepted part of daily working life. While this can raise issues about work-life balance that may need to be resolved in the longer term, it has also given more of us insights into what our colleagues are like when they are not in the office. It is not quite the 'authenticity' we have been discussing in our GC reports, but in some cases a strange sort of 'new authenticity' has been created, as hierarchies and behaviour that have been the norm in the office have ceased to be appropriate, with colleagues able to exercise more autonomy. Even the very real personal problems that the pandemic has brought in areas such as healthcare and childcare have become woven into people's working identities. It is too soon to know what the long-term impact of this will be, but it will be surprising if there is none.

Risk

42. Have you made risk management a central part of your job?

Our research – confirmed by many other commentators – is that risk is an issue that has become significantly more important for general counsel over the last decade. This reflects heightened awareness and the more sophisticated approach that many corporates now take to it. Risk has always been an issue for the business world, but after the global financial crisis it became *the* issue for many business people. The emergence of new categories of risk, chiefly centred around developments in technology, has exacerbated the trend, as has the catastrophic advent of the coronavirus pandemic, which shows signs of fundamentally changing the way some business people view risk.

The GC may not be responsible for corporate risk management. It may be led by the internal audit team or some other function, or there may be an enterprise risk function, a chief risk officer and team or some other specialist unit. The more regulated the industry, the more highly structured risk management – and the associated compliance structure – is likely to be. Banking regulators, for example, tend to be quite specific about the duties and acceptable structures of a bank's risk function.

But whatever the risk management structure, the GC needs to be involved with risk management processes, and should maintain a strong awareness of and interest in risk management across the business. They should be a part of any risk or compliance committee. It should be central to their role, whether or not they lead on it, and they should have the key risks facing the business at their fingertips.

The GC should also ensure the legal team remember that risk management is not the same thing as risk avoidance. A key part of it is the acceptance of managed risk to promote the business and create value. GCs may help to minimise those risks as far as is commercially sensible, but every GC should take care that they and their team are not seen as being 'anti-risk'. A GC who said instead that their job was 'to help the company take informed, sensible, profitable risks' would have written themselves a good elevator pitch.

43. Have you moved risk management beyond compliance?

This question is probably less relevant to many GCs in larger, more international and more regulated businesses. But for others, especially those in smaller and/or more traditional companies, it may still be a concern – even though, as noted in the previous question, the pandemic has shaken up some of the more traditional thinking about risk.

Many GCs were initially keen to become involved with compliance, when a trend began some years ago to make it part of their remit. For some, it offered an apparent opportunity to move beyond narrowly legal questions. But in some businesses it soon became a dead end rather than an opportunity, tying the legal team down in a mass of low-value 'box ticking' work. Worse still, some executives began to confuse compliance with risk management.

The GC may be ticking boxes rather than engaging with enterprise-critical and strategic questions.

If risk management is seen as a box ticking compliance-type exercise, a business will fail to engage fully with enterprise risk. There will be little or no scope for a unified, holistic approach to risk management, and an unduly risk-averse approach will be encouraged. It will be harder to integrate risk management into corporate strategy. And, of course, the GC and their team will be ticking boxes rather than engaging with enterprise-critical and strategic questions.

Compliance and risk management are both essential. They are related and are often grouped together. GCs have an obvious interest in both – we have stressed the importance of risk already, and compliance is key not only in regulatory areas but also in other areas highly relevant to GCs, such as ethics. But they are different disciplines and, even if the same GC or other business leader is responsible for them, they ought to be managed in different ways.



Companies want a good in-house legal department to help them avoid sleepless nights.

Siegfried Schwung
Former General Counsel and
Corporate Secretary, KUKA

44. Have you got effective crisis management protocols – for the business, and for yourself?

Rather like risk, crisis management is a key part of the GC's role, even if they are not leading on it.

When an emergency lands on your desk, or another desk in the legal department, you won't have much time to devise a response. Do you know who to call, internal and external, and what your immediate actions need to be? Think about it in advance, game the scenarios, examine different types of possible crisis, have different response plans ready. Half the battle is just to manage the situation effectively when you're fighting against the clock. Being prepared is essential.

If you have international responsibilities, have you got response plans for different jurisdictions – possibly including some where management and support are lighter and there are fewer senior legal staff?

45. What is your personal risk appetite?

This is a question to which there is no 'right' or 'wrong' answer, although very extreme answers would suggest that you may struggle to succeed as a GC. Few GCs will thrive with zero appetite for risk, but nor will any who would cheerfully bet the farm on the turn of a card.

What matters is that the GC understands their risk appetite, because it will affect (in some cases without their realising it) the advice they give, the way they do their job, and the way they manage their careers.

The traditional stereotype of the risk-averse lawyer is in decline – but there may still be some truth in it for some of the in-house team, and if that's what you are like then you need to be aware of it. Don't assume you are treading some sort of middle path with everyone else somehow being off to one side. If you have a greater than average aversion to risk, you need to be able to judge when to modify your behaviour accordingly.



Tiina Sepa

Head of Baltic Banking Legal, Swedbank

I've worked for the same bank since 1993, but we've had three different cultures. We started as the Estonian Savings Bank, with lots of private customers and retirees. We then merged with Hansa Bank, a strong commercial bank. So we developed a different working and business culture. Then, in 2005 Swedbank bought us, making us part of an international banking company with more of a Swedish culture.

When I started in banking, Estonia had just gained independence. It was a really interesting time. We invented all the new agreements, although of course we looked to Europe and especially the Nordic countries for ideas and inspiration. Since then I've lived through two financial crises and various different jurisdictions and legislation. When I started, we still had some Soviet laws. Then we got Estonian laws. Now EU laws offer a third framework – which is the toughest for the banking sector.

I'm part of Swedbank group legal. Roughly half of us are in Sweden and half in the Baltic countries. We also have a separate compliance function. Legal and compliance used to be together before the financial crisis, but now legal is very much part of the business – indeed, being close to the business is our main goal. I'm also part of the Baltic Banking management team and Swedbank's supervisory council, which increases my own closeness to the business.

It's important we all understand our goals, and know what is expected by the business side. We often saw the perception that lawyers were obstacles, risk managers who told the business what it couldn't do. We've managed to change this – now it's the risk management and compliance teams who get that complaint, not our lawyers! What I always remind my people is: stay close to the business. That way our value is appreciated.

I have 86 lawyers and my team work in every part of the business. All our lawyers in the Baltics are in a specific legal division in either Estonia, Latvia or Lithuania, because these are separate countries with their own laws and supervision. At group level, our legal teams have been united (working in matrix). It's good for lawyer motivation, and good for the business too, because there's a single Group Legal's Wanted Position (strategy), common guiding principles and aligned risk appetite. It also makes it easier for us to rotate people between roles, and give them a chance to learn about the work that's being done elsewhere.

I don't believe one person can run three different jurisdictions. But the business expects us to give them a common solution across borders, not three solutions.

So we identified our most important areas – *inter alia* finance, investment services and data protection – and assigned Baltic legal leads to co-ordinate the support, with the brief of achieving common input for the business.

The business would say that we are helpful – we know what the business is doing and how the business is doing it. It's our competitive advantage compared with external lawyers. We can't necessarily say we're cheaper, but we know how the business is set up and how it operates. That's a differentiator for in-house counsel generally: they understand their business and their sector better than external lawyers.

We do use external lawyers too, of course, and have an arrangement that they'll come in to share their experience and interpretation of legal developments with us from time to time. In annual gatherings, we also invite visionaries to talk about things like AI and the future.

AI is certainly coming. But we don't see new technologies as a threat. If standard work can go to a virtual assistant, then that leaves our lawyers free to solve exceptional cases and do exceptional work. Having our lawyers do the things that only they can do makes us efficient and adds value.

Having our lawyers do the things that only they can do makes us efficient and adds value.

Technology is also changing banking, although our biggest challenge is still the rapidly evolving legal environment and the tsunami of new regulations – the introduction of GDPR was crazy, with updating and changing all our agreements, internal rules and ways of interacting with customers. Now it is all about executing the AML directives and Know Your Customer requirements.

But the sector is opening up to other players, such as payment service providers, and smaller challenger banks can be speedier than some traditional banks in implementing new ideas. We are strongly engaged with innovation: we have innovation hubs in all our countries. But we also try to co-operate with the challengers. In the end we have a small market, with well-established banks, and we are ready for the competition.



We know what the business is doing and how the business is doing it. It's our competitive advantage compared with external lawyers.

Tiina Sepa
Head of Baltic Banking Legal, Swedbank



Ethics, culture and reputation

46. Are you an ethical leader?

Are you well positioned to lead on ethics and values in your organisation? If not, what needs to change?

There are two sorts of leadership to think about here. One is official responsibility for the ethical programme and/or position of the business. That may be part of the GC's role, or it may fall to someone else. Some companies now have a head of ethics or similar role. Or responsibility may rest with, for example, the head of compliance.

If it's part of the GC's job, then to be an effective ethical leader the GC will need appropriate resources and commitment, as well as clear management support. They will also need a strong mandate. And they will have to be a persuasive advocate for the ethical approach (see question 49), whether as a good thing on its own terms or as something that offers the business a competitive advantage or helps to satisfy regulatory requirements. If parts of the business regard the ethical programme as irrelevant or in some way optional, it will fail.

If parts of the business regard the ethical programme as irrelevant or in some way optional, it will fail.

There are arguments both for and against the GC being the designated ethical lead in the business. But if they are not the ethical lead, they will still need to exhibit ethical leadership. That is an integral part of the GC role.

GCs always have to ask themselves not merely whether behaviour is permitted but whether it's appropriate. They may also face the challenge of persuading some people in their organisation that this is the right question to ask, and that a broad view of outcomes is vital for future-proofing the business. This may be particularly difficult if bad behaviour has previously been perceived as acceptable, or if the GC is not a strong influencer at the highest levels of the business. But the status and background of GCs should give them the standing to ask difficult questions, notwithstanding the pressure that they may face to leave such questions unasked.

GCs should always be alert to ethical questions, but should not oversell their individual identity as the conscience of the business. If ethics are perceived to be exclusively a 'GC thing', then people who want to ignore or avoid corporate values have an easy excuse to do so. A GC is unlikely to be effective if they're seen as a distant ethical arbiter, particularly where that distance is geographical or cultural. Part of being an ethical leader is making it clear that ethics are, in fact, an issue for everyone.

GCs always have to ask themselves not merely whether behaviour is permitted but whether it's appropriate.

47. Do you have an ethical programme?

In question 49 we discuss some aspects of how such a programme might be set up. But before deciding to go ahead with an ethical programme, the GC – and the business – will want to consider pros and cons.

You will also need to think about how to keep your ethical programme fresh, how to make sure people don't forget about it after a while, and how to make it part of the onboarding process for new staff. It's worth being creative – can you use new technology, for example, or create ethics ambassadors, or praise and reward ethical behaviour? Can you give people useful tools such as decision trees or playbooks, rather than just dry documents? How will you keep it front-of-mind for your colleagues, rather than just something they think about when they have nothing else to do?

Can you give people useful tools such as decision trees or playbooks, rather than just dry documents?



Waldemar Koper

Legal Director, Asahi Poland

I began my career in private practice before becoming head of legal at one of SAB Miller's brewery groups, which was sold to Asahi in 2017.

The GC profession has changed quite rapidly in Poland. Just a few years ago it was only technical lawyering. General counsel now have a much larger and broader role than five years ago. Our colleagues from law offices are surprised we have become so prominent so quickly.

I decided to move in-house because I have always seen myself as business-oriented. I didn't want to be too academic in my work. I prefer to be in the centre of decision making processes. I like to be closer to clients. That's not easy when you're working in a law office – you do not get very much exposure to clients. In business you always have that exposure, even at a very junior level.

And I have moved myself from being a technical lawyer to being more general counsel-oriented, with higher and broader exposure in the business.

Ethics and reputation are key strategic factors in every business, especially when you have a mass market product, as we do in the beer industry. And developments like social media have made risk management in this area much more complex. Consumers are interested in every part of your business. Social media is an important way for us to communicate with them, but also potentially a risky one. We have to participate, but also keep the business safe and protect its reputation. It's an unavoidable part of the contemporary world, and now part of the world of the GC too. It's another example of how the role has grown.

We want to be innovative in how we educate people about legal things.

In-house teams in Poland have grown too. As an in-house legal function, we tend to be innovative. This does not necessarily mean using the latest technology, but we want to be innovative in how we educate people about legal things – how we 'sell' our legal knowledge – and how we stay close to the business.

For example, one can use compliance games or MTV-style videos to explain legal topics. We believe that the more the business understands who we are and how we can help, the more likely we are to be treated as part of the business and involved in solving problems from the outset.

The most challenging part of that is getting trust. It's like in Hollywood: you're as good as your last performance. It's very easy to make a mistake, or to lose someone's confidence if you give priority to something else. Speed is an important factor.

If you're not able to communicate with others without using jargon or technical language then you won't be successful in your work.

To gain trust you also need to understand the business very well. People assume that is easy – lawyers are meant to be very good at understanding lots of information. But sometimes I think if you really want to understand the business you have to spend a lot of time trying to see it through the client's eyes. That's not so easy. And I still perceive myself as a lawyer – although very much a business-oriented one.

But one advantage we have is that we can have a unique perspective on the business. We serve the entire business; we see the problems, opportunities and goals of all the areas of the business. So we can often provide more appropriate advice than external lawyers. We are also much cheaper than they are!

One of the most important things separating a good lawyer from an average one is communication style. If you're not able to communicate with others without using jargon or technical language then you won't be successful in your work. And you need the courage to speak up. If you are shy, even if you are a good technical lawyer, it won't work. People expect to hear your voice.

48. Do you understand the obstacles to compliance and corporate responsibility in your business?

Compliance, ethics, corporate responsibility, values – these are all different facets of a single idea: that there is a ‘gold standard’ way in which the company should behave. Even where the correct course of action may be ambiguous, in this view, there is an ethical magnetic pole towards which the corporate moral compass should point.

The difficulty that businesses face, of course, is that life continually sets up obstacles to gold standard behaviour. These may come about as the result of commercial pressures or human weaknesses or systemic flaws or bad decisions. Particularly in international companies, they may be the consequence of cultural differences and the failure to transmit ideas effectively across borders.

In some cases, pointing to potential legal traps will be more effective than appealing to ‘corporate values’, not least because a set of values devised in head office does not always flow evenly and consistently through every part of a company. Local cynicism about – or lack of interest in – what’s perceived as coming from head office is often an obstacle to harmonising behaviour.

Another problem is inconsistency. Not everyone will readily understand or agree with every aspect of a company’s ethical policy. For example, someone may find it easy to accept that bribery and fraud are wrong, while struggling to understand that aspects of their behaviour to colleagues may constitute harassment, or failing to appreciate the need to observe environmental or health and safety standards.

A GC who wants to be as effective as possible in ensuring ethical and compliant behaviour across the business should take time to map all these obstacles and devise – with whatever help they need from others – a plan for dealing with each of them. In many cases the solutions may be implemented by other people. But the GC will almost certainly be the person who is best placed to take the lead in finding those solutions.

Not everyone will readily understand or agree with every aspect of a company’s ethical policy.



49. How do you influence corporate culture?

Any GC should be a positive influence on corporate culture. But how should a GC who is officially responsible for promoting an ethical culture go about that?

As we've already said, the GC should ensure they have a strong mandate and appropriate backing from management, and should map – and find ways to negotiate – obstacles.

They should also have a clearly defined goal. This has to be something far more specific and commercial than 'make sure everyone plays nicely'. It might involve metrics around a rollout, or surveys after a rollout, or measuring the number and seriousness of infractions. It should, as a minimum, include delivering a functioning and realistic set of values, and ensuring both the values and their functioning are robust, wherever the company does business.

They are unlikely to succeed if they have to use threats or browbeat reluctant staff.

GCs will probably also opt to consult across the business when drafting any statement of culture or values, or code of conduct or ethical policy. Consultation helps to get people onside and is also useful in 'sanity checking' proposals, particular in areas where the GC has no first-hand experience. They may involve external counsel in the drafting for similar reasons.

The finished values or policies need to be introduced at the top of a company – indeed, they should be endorsed by the board – and spread downwards quickly and thoroughly. The GC has to ensure that their dissemination and take-up throughout the business is as smooth and comprehensive as possible.

This may require the GC to be an influencer, an advocate or a counsellor. They are unlikely to succeed if they have to use threats or browbeat reluctant staff. As Mark Cockerill observes on page 14, "the truth is, people who start out by being afraid will never embed the right culture to go forward. I want them to think about it positively – to build trust."

Even where buy-in is easy to achieve, practical training will be required. And in a large company, where the GC is one person among many thousands, they will need to look not only to local management but to the senior people in their local legal teams to be persuasive and influential advocates for ethical business. In some senses, the GC has to transform their personal integrity and influence into a system that will keep a company on the right track.

While this will undoubtedly be hard for some GCs, it is a massive opportunity for them. Law firms and other external providers can do many of the things a GC can do, but this is one area in which progress is nearly always best driven internally. And it is a role for which the GC is uniquely fitted. There has always been scepticism in some quarters about the GC as 'trusted advisor' in commercial situations. But when what's at question is trust itself, then the GC should always be the most credible person in the company.

50. What is your approach to whistle blowers?

Laws on whistle blowing vary between jurisdictions. But what are a GC's ethical obligations in this area? And what about their obligations to the business?

In a healthy corporate culture, a GC should be able to encourage whistle blowing. As a minimum, they should avoid doing anything to deter it. Encouraging the prompt reporting of concerns allows them to be addressed at an early stage, increasing the chances of avoiding more serious problems for the business.

The GC may also want to consider how effectively the business will deal with a whistle blower's complaint. If whistle blowers believe they will be dealt with fairly and effectively by purely internal processes, the company may be able to avoid the reputational damage that could come from external disclosure.

The GC should be satisfied that the procedures for dealing with whistle blowers are appropriate.

The GC should be satisfied that the procedures for dealing with whistle blowers are appropriate – practically, ethically and legally. They will want to look closely at questions of privacy, and how aspects of a whistle blower programme, such as helplines or 'confidential' email addresses, function and are publicised. In some instances, the quality and integrity of the culture around whistle blowing could be a mitigating factor in any regulatory action against the business.

It is important that the business's policy on whistle blowing is communicated in language that is easy for all staff to understand, and that it clarifies what might be difficult points for some employees to grasp, such as the difference between whistle blowing and raising a grievance.

There have been well-publicised cases (and doubtless many unpublicised ones) in which organisations have closed ranks against whistle blowers. The best way to prevent this is to foster a corporate culture in which that behaviour unacceptable, but if prevention doesn't work the GC is left looking for a speedy solution to a difficult problem.



Anna Rogmark

General Counsel, Director HR & Sustainability, Apoteket

I joined Apoteket, a Swedish state-owned pharmaceutical retailer, in 2005 as General Counsel. For several years I have been performing a dual role as both General Counsel and Director of Legal Affairs and Sustainability.

My role is quite unusual. I am a lawyer, and I head the in-house legal team. But I am also the head of the company's sustainability operations.

My role is quite unusual. I am a lawyer, and I head the in-house legal team. But I am also the head of the company's sustainability operations.

Like other state-owned companies, Apoteket was instructed to develop sustainability. Someone left and I was asked if I could step up to help out. After we completed the project successfully people thought perhaps I should take on the responsibility permanently.

My legal role has also grown smaller because, since the pharma market deregulation, we have only one-third of our previous market share. I only spend about 30% of my time on legal work. And we require a smaller legal team now, so I have just two lawyers working for me. Our goal is still to be self-sufficient in day-to-day legal operations, although for things like M&A or litigation we will still go out of house.

But if you include the various other specialists, who work on quality, environmental issues, sustainability, security and so on, I have a team of about ten, doing a much wider variety of work.

My job is to develop and grow how we work with sustainability issues, and the organisation's social and environmental perspective. It is not just about reporting, in the annual report or the sustainability report. It is how we follow up on that. Most companies have thought through their corporate governance in relation to operations and revenue, but how do you integrate that with environmental and social goals, employee focus etc?

We're aiming for a more holistic view. It has to involve the whole company. All my director colleagues have to consider sustainability in what they do.

Having a department called 'Sustainability & Legal' has helped us succeed. As a central legal function you know about all the areas of the business. And there is a lot of overlap between sustainability and legal – in compliance, securing the value chain, work with responsible suppliers, codes of conduct etc. And there are lots of governing documents. When you look at it like that, it is not so surprising that the responsibilities should sit with the same person, or that the person should be a lawyer.

As market leader we try to push for sustainability issues in the pharmacy market. And Apoteket now scores highly for sustainability in Sweden. In fact, we were number one in Sweden's sustainable brands index in the past two years. We have been successful at communicating our approach to sustainability to the consumer market. People relate to us when we talk about responsibility.

I feel my broad role is a huge advantage. But I belong to a network of GCs in state-owned companies, and I have heard some other members say 'I would never do that'. It would not suit every lawyer – but people have often said to me "I like working with you because you're not a typical lawyer." You have to like being a leader.

I want people who take their own decisions but with good judgment so they know when to come to me.

And leadership style is important. I'm indirectly involved in everything. I need to know what's going on in the areas I'm responsible for. But I want my colleagues to act independently and just involve me when they think I should know something or when they want advice. So I want people who take their own decisions but with good judgment so they know when to come to me. It's very important that there's trust and respect between leader and employees – as a leader you have to respect competence and let people find their own way. What matters is to focus on what they deliver.

It may be that regulatory considerations oblige the business to investigate the whistle blower's allegations and afford them a degree of protection. But in some cases the business will seek simply to smooth over the difficulty, leaving the allegations unresolved and reaching a settlement with the whistle blower. It is clear that non-disclosure agreements (NDAs) have been increasingly used in recent years, but the current backlash against these in some jurisdictions may leave many GCs looking for other answers. The GC may also need carefully to evaluate their respective duties to management (and possibly particular managers), the whistle blower, the business and the shareholders, as well as any overarching legal or ethical issues.

51. Is social media your friend or your enemy?

Basically, it's both. As Waldemar Koper puts it on page 39: "Social media is an important way for us to communicate with [customers], but also potentially a risky one. We have to participate, but also keep the business safe and protect its reputation. It's an unavoidable part of the contemporary world".

At a minimum, the GC should ensure that the business has coherent and realistic policies and procedures covering:

- Basic principles of the safe use of social media (including e.g. avoiding phishing exploits).
- Employees' use of social media, in both official and unofficial capacities.
- How far the business monitors social media use.
- A clear statement of the processes and sanctions that will apply when social media policies are breached.
- The business's own use of social media – including any approvals needed for social media posts.
- The intellectual property considerations of social media use.
- Social media training – which will need to cover everything from the use of inappropriate images to the need to ensure that rules on publishing inside information are observed.
- A rapid response protocol for when things go wrong, either with the use of social media by the business or staff, or where third party social media activities pose reputational or other threats to the business.

As we noted in questions 11 and 39, GCs should also be looking at how social media can help them network and build their brand.

52. What is your role in reputation management?

And could it – should it – be greater? Most GCs aren't likely to lead on reputation management for their companies (although it is more common in highly regulated industries). But the potential for any GC to be involved in reputation management is considerable. The GC's role in fostering ethical behaviour obviously plays straight into the maintenance of corporate reputation, and the GC's involvement in so many different aspects of the business makes them well placed to spot potential reputational threats.

Furthermore, in the age of social media (see the previous question) and ultra-fast dissemination of words and images, the GC and the legal department need to be able to act immediately, 24/7, to help counter assaults on the corporate reputation. A rapid response plan should be in place, with any necessary external lawyers and/or PR advisors pre-selected.

53. What is your role in sustainability?

In the UK no less a figure than the Prince of Wales, in a video address to the ACC Global GC Summit, last year asked GCs to help assess and reduce the impact that their companies have on climate change.

At the moment relatively few GCs will be, like Anna Rogmark, the head of their company's sustainability operations. But as she explains on page 42 there is a lot of potential overlap between the two functions, in areas such as compliance, standards, codes of conduct and arrangements with suppliers to create what is in every sense a sustainable supply chain.

And while there is clearly a connection between environmental and sustainability issues and a business's broader ethical outlook, the concept of corporate sustainability also extends to a business's impact on society, where the connection with a GC's brief on ethics and compliance is well established. For some authorities, it even extends to the idea of a business that can sustain itself – something a GC should certainly be able to get behind.

So: environmental sustainability, a sustainable social impact, and the organisation as an entity that can sustain itself. What can the GC do to promote these three objectives? Fortunately, GCs who want to do that are increasingly pushing at an open door. ESG (environmental, social and governance) issues are becoming increasingly important to a variety of legislators, regulators and investors – as well as for many employees and, not least because of climate change, for the wider public. Many businesses have never been more receptive to the notion that change may be desirable in these areas.

GCs don't need a special set of skills to lead or promote the ESG agenda. The attributes that we've dealt with throughout this report will all help the GC who wants to do that. However, that GC will also have to win permission – and, importantly, time – if they're going to succeed. So the real question for a GC may not be what they can do in this area, but rather whether they are able and willing to make it a real priority. Do you believe ESG will become a key responsibility for GCs in the 2020s, as compliance did for many GCs in the 2010s? And, if so, do you want to be ahead of the curve?

54. How do you ensure that you stay ethical yourself?

It's common enough for GCs to face challenges to their independence and judgment. And it's hardly uncommon for their commercial advice to be both accepted and ignored. But how should the GC react when their advice that a particular course of action is unethical is ignored?

Ideally GCs won't find themselves in that situation – not least because, in a perfect world, they would all have helped to establish a genuinely ethical corporate culture in their organisations. But the world is not perfect, and the situation does arise. Various questions may be relevant: is this a one-off, how great is the ethical breach (and how wilful), and is there any attempt at mitigation or rectification? Does it come from the top of the organisation? And how sure is the GC of their ground?

How should the GC react when their advice that a particular course of action is unethical is ignored?

Clearly an appropriate resolution is preferable. Indeed, the increasing regulatory, civil and criminal sanctions in some jurisdictions make a timely and appropriate assessment and resolution more important than ever. But where that is not possible and the problem is a serious one, a GC must be prepared to make the ultimate choice to walk away – potentially as a whistle blower themselves. Fortunately, it is rare for a GC's position in an organisation to become genuinely untenable because of that organisation's policies or actions. But when it does happen, and the GC is unable to fix the problem, then to remain in post is to be complicit.

Dealing with this situation is probably many GCs' biggest nightmare. Ironically, it is probably easier to handle where outright illegality is involved, as the GC's duties and options are likely to be clearer. But where that is not the case, the GC has to deal with the fact that, if they facilitate unethical behaviour, they will sooner or later come to be seen as unethical themselves – potentially beyond, as well as within, their organisations.

GCs also need to make sure they continue to think about what constitutes ethical behaviour, and how reliable their own ethical compasses may be. Recent years have provided numerous examples of public figures whose attitudes, words and actions have failed to keep pace with evolving public opinion. That can happen to lawyers too. What seemed unexceptional half a lifetime ago may be unacceptable today. GCs should be certain that their personal ethical codes would be praised, rather than condemned, if exposed to public scrutiny and debate.

GCs need to make sure they continue to think about what constitutes ethical behaviour, and how reliable their own ethical compasses may be.

How do you stay informed?

55. What methods do you have for horizon scanning?

The Institute of Risk Management offers three complementary definitions of horizon scanning.

- An organised and formal process of gathering, analysing and disseminating value-added information to support decision making.
- A systematic examination of information to identify potential threats, risks, emerging issues, and opportunities allowing for better preparedness and the incorporation of mitigation and exploitation into the policy-making process.
- Exploration of what the future might look like to understand uncertainties better and to analyse whether the organisation is adequately prepared for potential opportunities and threats.

The institute's *Horizon Scanning: A Practitioner's Guide* is a useful primer for GCs interested in this topic but unsure of where to start. However, there are some topics it doesn't cover. In particular we'd suggest that GCs in more tech-focused companies might also want to consider the possible utility of predictive analytics and other applications of AI. And all GCs should make sure they know what their businesses are already doing in this area before reinventing the wheel. It may be possible to build on or adapt work that is being done in another part of the organisation.

GCs might also want to consider the possible utility of predictive analytics and other applications of AI.

Even GCs who do not wish to engage in such structured horizon scanning should periodically reassess the methods they use to keep abreast of developments in their industry or sector, and among competitors, as well as in the law and legal services. And, crucially, they should look at how they use the information they gather to evaluate potential trends. A GC whose antennae are attuned to what's coming has an obvious – and major – advantage. And what's coming over the horizon may change frequently, so there's a need to keep up to date. As the pandemic has taught us all, things can sometimes change very quickly.

56. How do you avoid groupthink and other biases in the legal team?

The first definition of horizon scanning above includes a formal process of gathering value-added information to support decision making. That's at the heart of evidence-based management practice – the philosophy that, broadly, good quality thinking based on good quality data leads to good decision making. Put like that it sounds wonderfully simple. Naturally, it is rather harder in practice.

The two biggest obstacles to evidence-based management are the lack of good data and biases that distort decision making.

The available data will probably never be as good as you would like – it may not be sufficiently up to date, or broad enough, or reliable enough. The data set may be too small. But a rigorous approach can to some extent compensate for such problems.

What are harder to compensate for or eliminate are the biases and bad quality thinking that can cloud human judgment. These are legion; there are many ways we can fool ourselves. Six of the most relevant in this context are the following. These definitions are from the American Psychological Association's *APA Dictionary of Psychology*.

- **Availability heuristic** – a common strategy for making judgments about likelihood of occurrence in which the individual bases such judgments on the salience of the information held in his or her memory about the particular type of event: The more available and relevant information there is, the more likely the event is judged to be.
- **Belief bias** – the tendency to be influenced by one's knowledge about the world in evaluating conclusions and to accept them as true because they are believable rather than because they are logically valid.
- **Bias blind spot** – the tendency of people to see themselves as less susceptible to nonconscious predispositions and cognitive influences than others.
- **Confirmation bias** – the tendency to gather evidence that confirms pre-existing expectations, typically by emphasising or pursuing supporting evidence while dismissing or failing to seek contradictory evidence.

- **Groupthink** – a strong concurrence-seeking tendency that interferes with effective group decision making. Symptoms include apparent unanimity, illusions of invulnerability and moral correctness, biased perceptions of the outgroup, interpersonal pressure, self-censorship, and defective decision-making strategies.
- **Halo effect** – a rating bias in which a general evaluation (usually positive) of a person, or an evaluation of a person on a specific dimension, influences judgments of that person on other specific dimensions.

We could have added literally dozens of others.

We are not suggesting that human beings are doomed to make poor decisions, although clearly they sometimes do. Well-established heuristics work well in providing acceptable solutions to many common problems. But we can be challenged by complex decisions, involving many factors and data, and matters with which we are unfamiliar – such as strategic corporate decisions.

How can you lead the legal department towards better decision making?

So how can you lead the legal department towards better decision making? Education about biases and practice in decision making can help. So, for example, can ‘red teaming’: the practice of creating an independent group to challenge rigorously the thinking of the main group.

It’s worth remembering that the final decision on major issues within the legal department is likely to be yours. How confident are you that you can compensate appropriately for your cognitive biases?

57. Do you actively seek opportunities to learn more about the business?

The GC’s role gives them an advantage here. They may not be quite as much ‘across’ the business as a CFO or an HR director, but their responsibilities mean they should have a good general idea of what the business is doing – and a very good idea of what is going on in particularly important, complex, sensitive or problematic areas.

But there is always more to learn. The larger the organisation – especially where it is also geographically and/or culturally diverse – the harder it is fully to comprehend. Deeper dives into particular parts of it can be rewarding; they may highlight potential problems which the GC can nip in the bud. They may help the GC

understand reasons for non-compliance with corporate culture or standards. And they may provide insights into potential opportunities and ways in which processes can be improved.

The larger the organisation the harder it is fully to comprehend.

The GC’s biggest problem here is being time-poor. But a GC who can find time to sit in on, say, a sales conference or departmental training, or to read personnel reviews and departmental reports, is likely to come away with plenty of insights. Even if the task is wholly or partly delegated to someone else in the legal team, there are likely to be dividends.

58. How do you know what the business expects – and needs – from you?

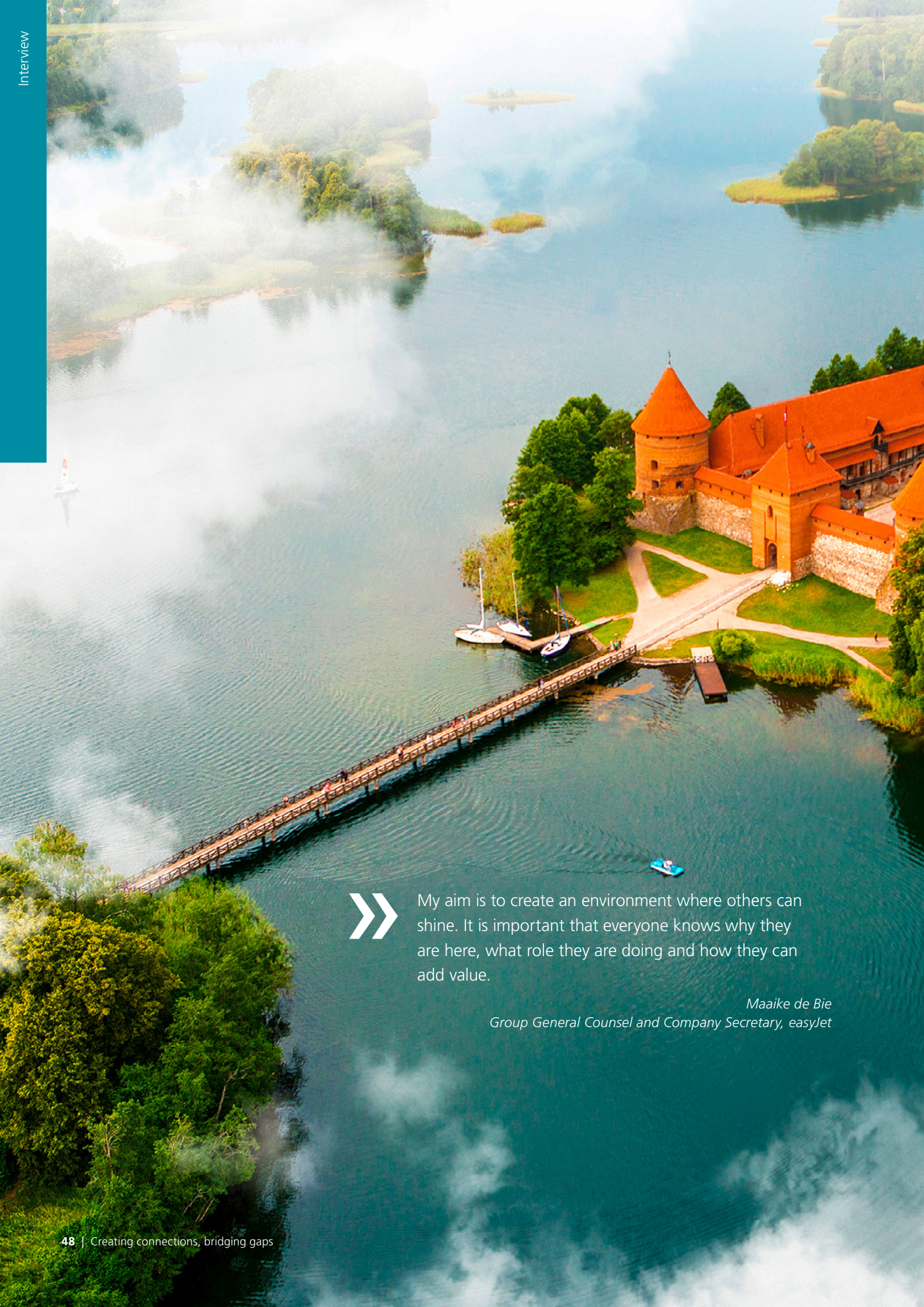
The GC will know in broad terms what is expected of them. Some of it may even be set down in their job description. But how far do they know what different departments, or subsidiaries, or key personnel want from the legal team?

There are various ways of finding out, but the most obvious is simply to talk to them. That is where the answer to this question dovetails with the answer to the previous one. Learning more about the business is also an exercise in learning more about what you can do for it – and what it thinks you ought to be doing for it.

59. Do you have the ‘real’ organisation chart?

You certainly have a copy of the organisation chart – a mass of boxes, lines, dotted lines and arrows. But imagine there is another chart, which shows you how power and influence actually function day-to-day in your organisation. This imaginary chart also shows you where to access ‘unofficial’ information. It may even show you who’s on the way up and who’s on the way down.

How well do you understand your organisation in those terms? Are you one of the GCs who tends to focus on their relationship with the CEO – or whoever their boss is – to the detriment of other areas? If you are, you might like to remember that GCs typically stay in their jobs rather longer than CEOs. How will you handle a change in management? Will your understanding of the organisation enable you to be a greater asset to a new boss? And can you improve your knowledge of which ‘levers’ you need to pull within the organisational structure to achieve your goals and the business’s goals?



My aim is to create an environment where others can shine. It is important that everyone knows why they are here, what role they are doing and how they can add value.

*Maaïke de Bie
Group General Counsel and Company Secretary, easyJet*



Maaïke de Bie

Group General Counsel and Company Secretary, easyJet

Maaïke de Bie spoke to us in her previous role as the General Counsel of Royal Mail.

I think one of the biggest challenges for General Counsel – or any leader of a team – is to get the right culture. This is not something you can do overnight, but it is such an important issue that it requires a lot of work from the whole team.

Our mission statement, which was agreed between the in-house team, is: Helping Royal Mail make good decisions. That captures our role as in-house lawyers, and provides a realistic, simple, and easy to understand brief for the team.

I encourage my in-house team to develop a broad range of skills and to be adaptable. One of the first things that I did after taking up the role of General Counsel was to restructure our team of lawyers into bigger groups so they were not restricted to sitting in specialist silos. Whilst I recognise the need to have in-house lawyers who are specialists and ‘go to’ people for a particular part of the business, I also want to encourage people to take on broader responsibilities.

Leadership

The most important three skills for any leader are strategy, execution, and the ability to bring people along.

To think strategically and to be disciplined enough to set aside time to think about strategy is not something that comes easily to all lawyers.

The ability to execute is another important skill. Even the best strategies will remain just good ideas if they are never actually implemented properly.

And the ability to bring people along and to have people buy into what you are doing is essential for any effective team and/or change.

Connections

Internal connections are important for any in-house lawyer. We need to be able to connect with the business, to listen to what is going on, to see risks and to be able to connect risks from across the business. As in-house lawyers, we are often well placed to connect dots all over the organisation – a valuable skill not to be underestimated.

I also place great value on developing connections outside of the business, particularly the ability to share experiences with other GCs and in-house lawyers. There is always a lot that I can learn from other people and I hope that there are useful tips and experiences that I can share with others. That’s why I’m always happy to take part in events, panel discussions, and thought leadership around issues affecting in-house lawyers and the legal sector in general.

Civil or common law?

I obtained law degrees in the Netherlands and Canada and I’m qualified to practise as a solicitor in both New York and the UK. I started my career working in private practice in New York and London before taking in-house roles at EBRD, General Electrics and Ernst & Young. So I’m fortunate enough not only to have worked both in private practice and in-house but to be trained in both civil law and common law jurisdictions.

In my experience, the main difference between the two systems is how lawyers are trained to look at things.

With my civil law training in the Netherlands, we followed a code-based approach and we were trained to reach the answer by following the set rules. In Canada, the common law training relied on a correspondence or case law approach where the lawyer would have to argue for a particular outcome.

More often than not, those systems would get to the same end result, but they adopt very different approaches. I don’t think that one approach is necessarily better than the other, they are just different.

Having been trained in both enables me to better understand the different legal customs and approaches that the parties may bring to the table and how best to engage with them.

The legal department

60. Do you have a strategy for the next three years?

Any strategy you create should of course be aligned with the strategy of the organisation as a whole. It should include key annual targets and, where possible, KPIs. As we suggested in our very first report for GCs, such a strategy will enable you to align the legal department more effectively with corporate goals, making it easier to justify investment and demonstrate the department's contribution to the company. By providing a common purpose, direction and clarity – as well as, potentially, rewards for measurable success – it should also help to motivate the legal team.

Once you have your strategy, don't forget to make it known. You will benefit from communicating at least some aspects of it to a much wider audience within the business.

61. Do you create time to think strategically?

As Maaïke de Bie says on page 49: "To think strategically and to be disciplined enough to set aside time to think about strategy is not something that comes easily to all lawyers." The average time-poor GC certainly finds it difficult to set aside significant blocks of time to consider strategy, or any other 'big picture' topic. But if you can't set aside time, it won't happen.

"To think strategically and to be disciplined enough to set aside time to think about strategy is not something that comes easily to all lawyers."

You probably know what approach is most likely to work for you. Perhaps you need structured time away from the day-to-day demands of work: a time dedicated to strategising, when you will only be interrupted if urgent and unforeseen problems arise. Maybe you need to set up a special team to support you by doing some of the work, such as research and data gathering. Or maybe you are someone who gets fidgety after two days of enforced relaxation and prefers to spend their holidays thinking about strategy instead. Whatever your preferred approach is, though, making time for it is crucial.

62. How do you ensure that your strategy is executed?

A good strategy includes a description of how it will be executed. Again, as Maaïke de Bie says: "The ability to execute is another important skill. Even the best strategies will remain just good ideas if they are never actually implemented properly."

As noted above, your strategy should be widely communicated. Its execution should also be decentralised to some extent; your strategy is unlikely to be a success if you have to drive every part of it yourself. Realistically, you will probably rely on different people with different skills to execute different aspects of it. You might even want to identify an individual in the legal department other than yourself who can be the day-to-day custodian of the strategy, rather as CEOs increasingly have chief strategy officers on their team. Regardless of who is managing the strategy, though, it needs to be subject to regular review. And as far as possible, you should be open with your team about its progress and the results of reviews.

63. Does the department have a remit to analyse how it can support and develop business interests?

Not so long ago, most GCs were essentially reactive. They dealt with what landed on their desk, sent from other parts of the business.

Today a GC is much more likely to be proactive, as shown by much of this report. But the model for the in-house legal department is still often a passive or reactive one. Proactivity at leadership level does not necessarily filter down to the lower decks.

There are steps that the GC can take to change this. At one extreme, they can fundamentally restructure the department. And that sometimes happens. But a range of less drastic possibilities is also on offer, including increasing individual empowerment, and outreach into the business and the creation of closer ties between part of the legal team and particular business units. Steps like this will enable more junior members of the team to support the business by shaping their own roles to an increased degree. Trend analysis and the sort of horizon scanning mentioned earlier can also help with that.

The GC can encourage the team to take the initiative in exploring the creation of added value or new revenue streams. This might involve, for example, a creatively managed IP portfolio, or an innovative approach to developments such as blockchain, or the identification and redeployment or sale of underused resources.

The legal team are uniquely placed to do this, assuming they have enough understanding of the business.

The other side of that particular coin is to stop the legal team doing work that has little or no value to the business. Moving the team away from low value work can be challenging – it's something we looked at in our first two reports. But for GCs under pressure to deliver more without corresponding increases in budget, or who simply wishes to optimise what they do for the business and move up the Value Pyramid (see page 19), it always remains an option – though it may involve tough choices about exactly what work can be dropped or redistributed.

If the work isn't of genuine value to the business it doesn't need to be done.

In some cases it will be possible not to drop work but to package it so that it can largely be done by paralegals (or, increasingly, computers). But there will be situations in which the GC's honest appraisal of a workstream is that it has negligible value.

The GC's position, ultimately, should be that if the work isn't of genuine value to the business it doesn't need to be done. And even if it is of value, does it have to be done to a very high standard, or are quicker, cheaper, solutions acceptable? These questions may involve the GC in delicate and sometimes politically difficult discussions. But they are worth asking – and are, incidentally, good examples of an area in which a GC who really knows every aspect of the business will be at a significant advantage.

64. Have you structured the in-house department to align it with the needs of the business?

There are various ways to structure the in-house legal department, but they fall into three broad groups.

- **Centralised**, where the legal department is a single, integrated function, operating primarily from head office.
- **Matrix**, in which the legal department is structured across geographies, practices and company subsidiaries.
- **Decentralised**, with the legal department operating as separate units in different businesses, with heads of legal answering to local CEOs.

Strikingly, when we asked in-house lawyers about departmental structuring, we found a lot of confusion. In some companies, we tried asking two different senior lawyers how the legal function was structured, and in a majority of cases got contradictory answers.

We hypothesise that this is because lawyers, like other employees, tend to have a highly subjective experience of corporate structure.

One might then ask: if even senior lawyers don't have a firm grasp of how their own department is structured, how can they understand, and maximise, its alignment to the business? The answer may be that it is sufficient for them to have a good understanding of the importance and effect of the work that they are personally involved in. Many GCs would probably echo Tiina Sepa's words on page 36: "What I always remind my people is: stay close to the business."

Nevertheless, the GC at least has to take a wider view. They have to design a legal department that will give the business everything it needs. They also have to take into account the needs of their team: e.g. junior lawyers need exposure to the business if they are to develop. They have to find the right balance between setting up specialist units and breaking down silos, and between making things as easy as possible for the business – e.g. by facilitating 'self-service' arrangements – and ensuring that decisions and actions receive appropriate scrutiny. And in some cases they may have to include a wide variety of people – not just the lawyers and those who support them but, for example, risk and compliance specialists or procurement experts.

65. Have you developed a brand for the in-house function?

We've already touched on the question of your personal brand. But shouldn't the legal department have a brand too? In one sense, of course, it already has – it will have a reputation, and its users will have a view of it. It will have an image within the company. But only a small number of GCs actively seek to shape and improve that image.

You may feel that this is outside your area of expertise. But if your company is large enough to have a legal department, it will almost certainly have a business development, marketing or communications department, with knowledge and skills you can draw on.



Eduardo Dominguez-Adame Bozzano

Group general counsel, Urbaser

I have been the Group general counsel at Urbaser in Madrid since 2001. I am also the company secretary and I am part of the executive management committee. The in-house legal team is responsible for the group acting in compliance with all relevant laws and regulations.

Urbaser Group's in-house legal department has a matrix structure, with a central team of 11 lawyers in Madrid, and about 15 other in-house lawyers in our key operating jurisdictions such as Argentina, Chile, Mexico, Venezuela, Portugal, France and the UK.

It is important to have dedicated in-house lawyers on the ground in our key jurisdictions.

I have built the in-house team over many years as the company's operations have grown. It is important to have dedicated in-house lawyers on the ground in our key jurisdictions, so that they are close to the business and can understand and see key risks. I have a periodic video call (fortnightly, monthly, quarterly, depending on the needs) with each jurisdiction outside of Spain, which is an opportunity to discuss key issues affecting that particular jurisdiction or part of the business.

Either I or a colleague will also travel to visit the local in-house counsel in a particular jurisdiction in person on a regular basis, as face-to-face meetings remain the best way to develop and maintain strong relationships.

I have been fortunate in that there has not been a high turnover of lawyers in the in-house team during my time as general counsel. I aim to allow our in-house lawyers to work independently and to assume responsibility for their particular area or jurisdiction. I trust my team to know when to report back to me on material risks.

Urbaser's business involves providing environmental and municipal services and contracting with the public sector. That means that our in-house lawyers necessarily tend to have certain specialisms such as experience in public sector contracts. But the in-house team cannot be specialists in everything. We take advice from external law firms where appropriate.

The job of the in-house team is to know the business as much as possible. A good way to describe an in-house lawyer is as a specialist in the business and a generalist in the law, whereas external lawyers are usually specialists in the law and generalists in a sector since they are advising various clients from different sectors.

A changing landscape

The biggest change I have seen over recent years is an increased focus on compliance. We implemented a new compliance programme two years ago. The company now has a separate compliance team that operates independently from the executive and the in-house legal team.

In terms of other changes, there has been an increased use of technology generally both across the business and the in-house legal function. We will continue to make use of available technology where it can help improve our working practices. However, I don't envisage that technology will have a significant impact on the number of lawyers that we need in our in-house team in the short to mid-term, given the nature of the work that we do which is really tailor-made and not recurrent.

Your team

66. Do you trust your team?

In our previous reports for GCs, we have written extensively on the question of trust. But we have usually been talking about the need for the GC to be a trusted counsellor to the board, or for the legal team to be trusted by the business. Here the question is slightly different: how much do you trust your team – collectively and as individuals? How far have you empowered them to act independently? Are there any of your lawyers whom you wouldn't feel happy to put in a meeting with your CEO? How big a matter will you trust them with before you feel you have to be involved?

It's often hard to find the balance between freedom and control – not only from the point of view of the GC, but also for the person they're managing. One of our interviewees said "there's a tendency for all lawyers to micromanage" and, even if you don't agree with that, you'll probably accept that it's not an uncommon behaviour pattern in the legal profession. However, many lawyers don't like to be micromanaged themselves, and micromanagement is not usually seen as a healthy management trait.

If you do trust your team, it might be interesting to ask yourself whether – or how much – you tend to micromanage them anyway, and why. If you really don't trust your team, on the other hand, you have a major problem.

If you are like some GCs (and other bosses) then, if you're giving an absolutely open answer to the question, you'd say you largely trust your team, but that you don't have total confidence in some individuals or scenarios. That's not a bad answer, it's an honest one. But it invites a further question: how can you fix it so that you *do* have confidence? What do the team (or you) have to change, in order to achieve the right balance?

Consistency may in fact be more important to the team than your particular style of leadership.

67. Are you consistent in your messages and the way you present yourself to your team?

It's common for people to value consistency in their leaders. It's often equated with authenticity (see question 41). Consistency may in fact be more important to the team than your particular style of leadership.

On a basic level, consistency is valuable because it means people know how things stand. They know they can rely on you to do certain things, and can have an idea of how you're likely to react in a particular situation. They will naturally want to be able to trust you, but trust doesn't just happen. It is harder when there is no consistency (or when other key attributes, such as judgment or fairness, are seen to be absent).

As one GC told us a few years ago: "Being honest, especially in legal functions, is essential. In this kind of role you will inevitably deal with bright people that are trained to question things and be cynical to a degree. They like honesty and empathy and they will respect that."

Consistency is also crucial for the GC who is – or aspires to be – a role model. As Katharina Schelberger puts it (on page 58): "I need to be a role model for [the team]. I have to act like I want them to act. As a GC you have to have credibility as a lawyer, but also as a person. How you behave is important. People watch you."

The GC's messages to the team should be both clear and consistent. They will take their lead from you. If your team believe you don't think something is important, they probably won't treat it as being important themselves.

68. Do you use KPIs for the team?

We discussed the importance of KPIs in question 10, in terms of how they can be used to show that the legal team is adding value to the business. But it is worth adding that their use can be beneficial to the team itself.

KPIs can be used in determining bonuses and other rewards or remuneration. They can help to make sure the team concentrate on key matters. They can be valuable in promoting the team and boosting morale: if targets are met or beaten, that's a success that can be publicised. And as Maria Rocha Barros observes (on page 70), shared targets can connect people and help foster teamwork.

69. Is there a 'value gap' between what your team is capable of and what they actually achieve?

You probably have a suspicion that there is – or is not – such a gap. But it's always worth backing up your gut feeling with data. Have you got a system of metrics or indicators to help you detect and measure it? Are there benchmarks you can use?

Assuming that you've hired good people, and your team is therefore up to the job, if you do detect a gap you will have to work out how to bridge it. The data may give you an idea where it is. The answer may be as straightforward as streamlining processes or reducing repetition. It may be a more subtle point: where the business only needs 'good' work from your team, for example, any effort they put into doing 'very good' work is without value. Or there may be problems that are harder to solve, such as conflict within the team or poor morale.

Whatever the issue, you will increase your team's value to the business if you can detect it and resolve it.

70. How do you recruit the right people?

A GC who is recruiting will usually be doing so because there is a business need for a new team member. They will want to recruit the 'right' person to that role. But that seemingly simple proposition raises many questions.

Some GCs will now only hire staff who have experience in other in-house teams.

As a first step, you need to establish what you mean by 'right'. That will involve a full job description, based on which you will be able to draw up a list of the experience and skills a successful candidate will need to have, along with the weighting you propose to give to each. This can be surprisingly difficult. For instance, many GCs would agree with Juhani Ristaniemi when he says (on page 80), "I would not hire a lawyer who didn't have the potential to be a leader in some other field." That might be a good criterion, but measuring it is not easy, especially if one is recruiting junior staff who may have had only limited opportunities to display their leadership potential. One way would be to identify various 'proxies' for leadership ability and test for those.

In most cases GCs will be recruiting to reflect a variety of criteria. Legal skills may be the least contentious. In some cases, they may be just a box to tick, because all the plausible candidates will be good technical lawyers.

Commercial and business skills may be more problematic. Some GCs will now only hire staff who have experience in other in-house teams, rather than lawyers straight from private practice, because they believe the latter lack a genuine commercial outlook. The rapid growth in the profession and the consequent increase in the size of the in-house talent pool has made that a much more viable option that it would have been a few years ago.

There are various strategies to reduce bias.

GCs searching for the 'right' candidate should remember that recruitment is an area in which our many unconscious biases can cause problems. Affinity bias, for example, can lead us to prefer people who are similar to us (or to our friends), while status quo bias can make us prefer candidates who resemble the incumbent. There are various tested strategies to reduce bias in recruitment, including reviewing anonymised CVs, using structured rather than unstructured interviews, and grading candidates according to well-defined metrics rather than subjective impressions. The GC who is hiring should be aware of such techniques. Not only do they improve the quality of recruitment, they help to avoid allegations of bias or discrimination.

You will want the legal department to be seen as an attractive place to work by people with the skills and experience you need. This may involve making the working environment itself attractive – and, now, probably facilitating a positive regime for remote working. It will also include structuring roles to encourage work-life balance, supporting employee health (including mental health) and welfare, and making other changes that may appeal to strong candidates, such as those discussed in the next few questions. Obviously these options have their own merits too, and will make the legal department more appealing to existing employees as well as potential ones.

71. Have you got a structured programme for talent management?

As the Chartered Institute of Personnel and Development says, "Talent management seeks to attract, identify, develop, engage, retain and deploy individuals who are considered particularly valuable to an organisation."

In all but the smallest legal teams, it will usually make sense to run a structured programme to handle the identification, development and engagement aspects of talent management. This is likely to revolve around training and personal development, with regular evaluation and feedback, but may also include, for example, mentoring, shadowing staff elsewhere in the business, and the rotation of legal staff between different business units to develop their skills and experience.

A prerequisite is that the GC has evaluated the need for legal department talent within the business, and identified any gaps that exist or are likely to develop.

A good talent management programme will increase its participants' skills and job satisfaction, and secure for the business the pipeline of talent that it needs. Defined targets or metrics will help to show that it's working and providing value for money.

The GC will want to design their talent management programme in conjunction with HR specialists, and possibly external advisors. There will be a range of questions to consider in shaping it. For example:

- How does your talent management programme integrate or interact with similar programmes elsewhere in the business?
- How far do you have to adapt your programme in the light of the pandemic and changed working arrangements?
- How will you identify talent and latent potential?
- Will you integrate KPIs with the talent management programme?
- How far can you practically personalise the programme?
- How much focus will you put on getting the best from 'difficult' talent?
- Will there be mechanisms to identify the top performers and invest in them in a more targeted way?
- How much scope will there be for individuals to create their own opportunities and take control of their own careers?
- Will participants whose performance does not reach specified standards be asked to leave?
- How will new participants be onboarded?

72. How do you reward talent?

Talent can be rewarded in all sorts of ways, from the acquisition of status to the experience of job satisfaction.

The one form of reward which we can guarantee is common to everyone in your team is money. However, many commentators suggest that financial remuneration is not a key driver for in-house talent. That may be true up to a point – although when we surveyed junior lawyers on this, we found it mattered to them more than many of their GCs thought it did. But lawyers who come to believe they are underpaid in comparison to other team members or industry norms, or that they never get a raise, can lose motivation.

Conversely, there is an argument for recognising outstanding performance with a bonus or similar reward. The official, formal nature of such recognition can be just as motivating as its financial value.

All sorts of incentive structures and packages can be put in place – what is possible and appropriate will depend on your circumstances. But for them to be effective, you need to be sure that your team will actually be incentivised by them. It is worth discussing this, and involving your HR team in evaluating feedback from your staff to decide what will be most cost-effective.

73. What other methods do you have for motivating and engaging talent?

Marta Cruz de Almeida, on page 20, suggests various tactics to motivate and engage talent, including the creation of flatter hierarchies, increased autonomy, positive and constructive feedback, and the overt demonstration of the GC's confidence in the team. This bears out the research we did for our fourth GC report, which shows that junior lawyers value all these things – in fact, on average, they felt these things were more important than their GCs did.

The GC should strive to ensure that their teams' roles are as interesting as possible. This is an important aspect of retention. One GC we interviewed explained it with the concept of 'apparent movement'. He felt that in-house lawyers are much more content if they believe they are achieving continuous career development, even where that development comes through new challenges and opportunities rather than promotion. A good talent management programme (see above) will help too.

But for many lawyers, there will come a time when apparent movement has to be replaced with real movement. Most of the GCs with whom we've discussed talent management accept that the majority of their good lawyers will eventually take jobs elsewhere. In-house departments usually don't have enough senior roles for them to move up into. But it makes sense to retain them for as long as possible – or at least until it becomes clear that they need to move in order to advance their careers. Good people are always an asset, and retaining them is usually more cost-effective than replacing them.

Some GCs – like Siefgrfried Schwung (on page 32) – encourage talented people on their teams to consider moving into jobs within the business but outside the legal department. As he says: "I have to fill the position again – but it's a good opportunity for them." The legal department has to recruit again, but the business as a whole benefits.



The easiest thing a lawyer can say is just 'No'. Probably the second easiest thing to say is just 'Yes'. The hardest communication is 'No, but...' or 'Yes, but...'

*Mark Cockerill
VP Legal – Corporate (EMEA/APJ) and Head of Global Privacy,
ServiceNow*



Katharina Schelberger

**Leiterin Konzernrecht und
Vorstandssekretariat, ÖBB-Holding AG**

I have been the General Counsel at ÖBB, Austria's state-owned rail company, for over seven years.

Working for a state-owned company is different from working in the private sector, but many of the same challenges of being a good general counsel apply.

One important difference, though, is that everything you do – and everything your board does – is interesting to the public. Public money is involved. So there are always questions about why we should do a particular deal or whatever.

And there is a lot of paperwork, including paperwork for the board. Everything is documented – there must be a great deal of detail and it must all be accurate. We're under the control of many state officers and must expect at any time that they may look at our minutes and our proceedings. We have a lot of regulations to comply with.

Sometimes lawyers who work at law firms apply to join us because they think it's less work – but it's not! It's just different.

We do have some advantages too though. We can be flexible about home working. Younger colleagues are coming to expect this, and if you don't make it possible, they don't want to work for you. I find that, as long as I trust them, they deliver, even if they are working at home for a day each week.

We can be flexible about home working. Younger colleagues are coming to expect this.

In the same way, they are flexible in their office hours, as long as the work gets done. They don't even have to wear suits. They can wear jeans as long as they don't have to go to high level meetings. Some law offices are doing this too now, but I think we are ahead of them.

I like to give people the space to work freely. But they also know they can come to me whenever they want to. I have an open door policy, with no appointment needed. I work at the highest levels in the company – I report to the CEO, which is important for my standing and the department's standing, and I'm at important management meetings, and present during key strategic and business discussions. But I also need to be accessible to everyone in the legal team. And I need to be a role model for them. I have to act like I want them to act. As a GC you have to have credibility as a lawyer, but also as a person. How you behave is important. People watch you.

I also need to be accessible to everyone in the legal team. And I need to be a role model for them.

I decided to move in house because I wanted to connect with the business – to be part of the business. And even in a state-owned business, that means taking a commercial approach. So it's important, to take just one example, that you don't write long emails – you make sure you include a summary, and get to the point quickly. You have to be flexible enough to communicate at different levels in the business, and you have to make sure you understand how those different levels work and understand the processes of the business.

You also have to be honest about risks. People often don't want to hear that, but GCs are required to make risks clear. And not just GCs – everyone in the legal team has to do that, even if they are young and inexperienced. It's important they're not afraid to do so. Our job is to help the business find answers to its problems – if we want to be trusted by the business, we have to deliver solutions and be flexible – but everything has a legal border and you shouldn't go over it.

Of course the GC has to keep a focus on what's important, while being a manager and managing a thousand other things. But I believe we succeed. When we survey how people in our company feel about what we do, we get very good responses.

74. What do generational differences in the legal team mean for how you manage it?

A topic which has been getting a lot of attention in the legal world is how to manage generational differences effectively. But what are the real differences between the so-called baby boomers, Generation X and the millennials?

Different writers on the subject sometimes attribute quite different characteristics to the same generation. But, broadly, baby boomers are said to be idealistic and optimistic, and to be the highly driven possessors of both a strong work ethic and a stronger urge for personal gratification and satisfaction than the generation born between the world wars.

Generation X-ers are meant to be more cynical and less formal than the boomers, more entrepreneurial and more attuned to technology, with more interest in achieving a work-life balance. Millennials are supposedly 'hyper-connected', enthusiastic about collaborative working, ethical, flexible, creative, impatient, and keen on personal development. In the stereotype beloved by the mainstream media, they also tend to over-share, to have a highly developed sense of entitlement, and to lack both commitment and a meaningful attention span.

What are the real differences between the so-called baby boomers, Generation X and the millennials?

GCs should treat such descriptions with caution. They are at best generalisations. It is obviously highly unlikely that everyone born in 1982 is cynical and entrepreneurial while everyone born in 1983 is tolerant and ethical.

It is true that big data does show generational differences (although many of these are more subtle than the stereotypes). And if you contrast a group of 30-year-old millennial lawyers with a group of 60-year-old boomer lawyers, you will clearly find differences in attitude and outlook. But at best these are signposts. Personal differences *within* each group are likely to be more significant than the difference in the averages between the groups. And as a GC seeking to support and develop their staff your primary focus needs to be the particular and the personal. Your job is to do your best for – and get the best from – each individual, not from their generation as a whole.

A GC should certainly review their working practices and management style in the context of what the next generation thinks. They will have some good ideas you've

Generations

There are various definitions of recent generations, but they are generally taken to be roughly as follows.

- **Baby boomers** are usually said to be those born between the mid-1940s and the mid-1960s.
- **Generation X** are generally said to have been born between the mid-1960s and the early 1980s.
- **Millennials**, also called **Generation Y**, were born between the early 1980s and, broadly, the millennium. (There is considerable disagreement about the 'correct' end date.)
- **Generation Z** are those born after the millennials. Unless one assumes a very early end date for qualification as a millennial, the Zs will not yet be on the radar of the legal department.

These divisions are essentially based on conditions in the USA. Some countries and cultures perceive other generational divides – eg some CEE nations differentiate between those who grew up before and after 1989.

missed, and if you can find ways of working that suit your team better, that can only be a good thing. For example, Katharina Schelberger (on page 58) noted that her younger colleagues value flexibility in the working day and dress codes, as well as the ability to work at home. The pandemic, of course, has since proved to many businesses that employees from all generations can work from home, often very flexibly, with levels of satisfaction differing between individuals rather than age groups. And our experience suggests that this is not uncommon: while some innovations may originate in the preferences expressed by younger team members, they are often embraced across the team. They are accepted because they are good ideas, not because they belong to a particular generation.

Our experience also suggests that, if you genuinely embrace diversity (see question 79), you will find handling generational differences to be a much easier task.

75. Are you making as much use as you can of non-lawyers?

Many in-house legal teams have paralegals, administrators and similar support staff. Some have had them for decades. But in recent years it has become more common for in-house teams to include a much wider range of non-lawyers. Some now have project managers, information analysts, business analysts, finance managers, knowledge managers and others.

Above all, a growing number of larger in-house teams now have a legal operations manager, officer or director – effectively a COO for the legal department. Their role is typically to support the administrative and technical needs of the department, although there is considerable variety in what they actually do. The 12 core competencies identified by the Corporate Legal Operation Consortium are as follows.

- At foundational level: financial management; vendor management; cross-functional alignment; and technology and process support.
- At advanced level: communications; data analytics; organisational design, support & management; and service delivery & alternative support models.
- At mature level: litigation support & OP management; knowledge management; information governance & records management; and strategic planning.

As that list makes clear, the most sophisticated legal operations directors have highly developed and broadly resourced remits. At the other end of the scale are legal operations managers whose focus is essentially on managing workflow, keeping the technology working and monitoring spend. Even this, though, can be a real advance for an in-house legal department that has previously lacked such support.

One of the first things a legal operations specialist will do is look at the balance of lawyers and non-lawyers in the team and the distribution of work between them. But even GCs who lack legal operations support can do this. As we noted, many legal teams have included non-lawyers for many years, but they have not always optimised their use of such staff.

How do you manage change from a distance?

In addition, technological advances are increasing the potential contributions of non-lawyers. Some common processes can be at least partly automated; others can be improved through the use of playbooks and templates. It may be possible and more cost-effective to have non-legally qualified staff do some of them, or to move them to sites where staff, whether legally qualified or not, are cheaper. If you can negotiate the right package, you might even consider outsourcing some of them. GCs aiming to move up the Value Pyramid (see page 19) need to ensure that routine or low-value work is resourced appropriately, enabling more senior members of the team to focus on high-value, more strategic matters.

76. How do you manage across cultures and borders?

Maybe you don't need to do this. But if some of your team are in other jurisdictions – particularly where those jurisdictions also have different cultures – this is probably an issue for you.

There are some very standard approaches to dealing with the situation. They include the weekly conference call, the yearly or twice-yearly whole team meeting, 'dotted' reporting lines, and so on. And in most cases, there aren't many realistic alternatives to such approaches.

This is an area in which it is relatively easy to be adequate, but very hard to excel.

But are you a GC who regularly tests the success of these ways of communicating with and managing your more distant people? Do you look for incremental improvements you could make? How do you make sure you're not missing something? And how do you ensure you have the cultural sensitivities you need?

Furthermore, do you strike the right balance between central control and regional autonomy in risk terms? How do you bridge the gap between local and central practices and assumptions? How do you manage change from a distance?

Our conversations with GCs over the years have led us to conclude that this is an area in which it is relatively easy to be adequate, especially with modern technology, but very hard to really excel. Do you excel?

77. How do you teach your team?

Know-how is often an issue for in-house legal teams, especially smaller ones. They are unlikely to have dedicated knowledge staff, and often rely on a mixture of updates from their preferred law firms and subscriptions to journals and online knowledge services.

Training is even more of an issue. In a small team it is challenging both to provide the ongoing legal training that's required by the team as a whole and to deliver the individual training and support needed for personal development. Inevitably most such teams outsource this type of provision, so its supply is often constrained by budgetary factors. Where teams are small, GCs may find that collaborative engagement helps them understand what will equip the team to grow and develop, and make the most of whatever training is possible.

Even larger, better resourced teams often struggle with training. What they teach their junior lawyers is sometimes unimaginative, and not as relevant as it might be to what those lawyers actually need. Any GC planning a training programme should conduct a thorough needs assessment. They might also consider polling their team to find out what the team actually wants to spend time learning and developing. We've already noted how some key or high-performing individuals can benefit from talent management programmes, but it can be more challenging for a GC to develop the skills and careers of the rest of the team too. Involving the team in devising a training programme will not only increase their level of engagement, it will also almost certainly make the training more effective.

GCs should consider how far their team are able to take advantage of skills training that's on offer elsewhere in the business. But they should also think creatively. Is it possible to share some training sessions with legal teams from other businesses, which would cut costs? Can they negotiate more training and know-how support from their panel firms? If they have specialist knowledge or expertise themselves, can they leverage that – for example by delivering training to another company's in-house team in return for training delivered by that company's GC? Can they maximise the use of the available technology to deliver training to a geographically dispersed team? Some of these approaches are unorthodox, but GCs with tightly constrained budgets need to be adept at thinking outside the box.

A consideration of your knowledge systems and training programmes may raise broader questions. Are you hoarding knowledge within the legal department? How far can you become an 'open source' team, giving other parts of the business direct access to templates, processes etc? Do the obvious – but probably manageable – risks of such an approach deter you from pursuing the potentially considerable opportunities and benefits?

78. Are you promoting equality?

The in-house legal profession has been better than many others at moving towards gender equality (although in some countries, sadly, it has not been as much of a leader in promoting racial equality). However, it is still far short of ideal. For example, only about one-third of Fortune 500 GCs are female. That's far more impressive than the 7.4% of female CEOs in the Fortune 500. But there's clearly still a way to go.

There is no shortage of female junior lawyers. In every EU member state, more women study law than men, and many of them enter the profession. In England & Wales, for instance, women now account for nearly two-thirds of trainee registrations. So what are the obstacles to their progression in the profession – and what can you, as a GC, do to promote equality, both within and beyond your business?



One of the most important things separating a good lawyer from an average one is communication style.

*Waldemar Koper
Legal Director, Asahi Poland*



Bjørn Raasteen

Group General Counsel, ISS

I have been at ISS since 1999 and I've been Group GC since 2005. I was previously in private practice, which I loved – but I decided that if I was going to try in-house work it was time to do so, and I've never looked back.

When I came to ISS there was one senior lawyer who had been there for ten years, well-trained, with all the virtues of a good lawyer, but totally overloaded. At the time the ISS Group HQ was very lean with around 50 employees controlling and overseeing the businesses worldwide. Our subsidiaries operated to a large extent autonomously with little involvement from Group on governance and contractual matters. So we could show value immediately. I could get involved with everything – treasury, legal risk management, procurement, M&A. Everything that was valuable and interesting.

ISS is now a huge facilities services company that has tripled in size since I joined. When I arrived it was just changing. It was the largest cleaning company in the world, but it needed to develop if it wasn't going to be taken over or become just a subcontractor to other players in the market.

We decided to grow and diversify. In eight years from 2000-2008 we acquired 660 companies around the world. It was a crazy period. Many of these were small acquisitions, but there were also what we called large and extra-large acquisitions.

In the middle of it all, we were taken private by Goldman Sachs and EQT, a Scandinavian based PE company, which added a lot of complexity to ownership, structure, financing and governance etc. We tried to relist in 2011, but the earthquake and tsunami in Japan happened in the week of the roadshow and investors closed their books. Over the following summer, our owners were approached by a large security company that wanted to combine the security business and facility services business of ISS. The proposed combination eventually failed, and in the following years ISS went on to divest a number of non-core business and reduce the debt. We finally relisted in 2014 on the Nasdaq Copenhagen stock exchange. So I've seen a lot from a transactional point of view. And now we are back to running a business!

The legal function is small. We have four regional legal guys – one in the US, and the others in Copenhagen. We have two senior lawyers supporting the winning, growing and retention of our large international bids and contracts. And we have a small admin team of two people and now also a young assistant attorney.

We have businesses in roughly 50 countries, about 30 of those with legal people. And we have GC-type people in about 20 of those countries.

We try to have good relationships with external counsel that know us well. Especially where we don't have our own legal people, it's very important to have the right counsel on the ground.

It's important to have the right people in-house too. We are in a low margin industry. So we have tight cost control and a very light set up. We consider ourselves very agile and quick on our feet, and need people who can work like that. It's a question of going for the best of what's out there. We're always looking for good talent. And when we recruit them they get what I promise them – an interesting job with an international outlook and plenty of work.

I've had five colleagues that have gone through my function and stepped into other senior roles in ISS. One talented person looked after our capital markets and financing documentation. He wanted to do something different and moved to our treasury department, which he now heads. Another guy I hired in 2009 has been running the largest account in the group. Two of my female colleagues are now Head of Strategy and Transformation in one of the largest regions and Corporate Secretary to the Board and Executive Management, respectively.

All of those people are very commercial and numerate. And it's really important that all our lawyers can understand the numbers and how we influence them, and appreciate the basics of accounting – when will this hit the P&L, what line will it hit, what is the balance sheet impact?

Financial acumen is among the 12 core leadership competencies in ISS. Others include being able to instill trust with customers, colleagues and employees and being able to collaborate and build effective teams. From a legal function perspective instilling trust ties into integrity – knowing when to put your foot down, and being able to deliver unbiased, independent advice.

I sit in our executive management – there are nine members of the EGM and me in the capacity of Group General Counsel. To fill that role you have to decide how you contribute to the team, and what you try to influence. Of course I try to influence in various ways, but when I leave this job, I hope I'll be able to say especially that I had an influence on the culture, and that I'm leaving an honest, transparent company that does the right thing.

Governance and compliance are key areas to ISS as they are part of our value proposition to our customers. All our leaders regularly go through Code of Conduct and various compliance, CSR, health and safety training. It's so important for the company and making sure that it happens is a really important part of my role.



It's really important that all our lawyers can understand the numbers and how we influence them, and appreciate the basics of accounting – when will this hit the P&L, what line will it hit, what is the balance sheet impact?

*Bjørn Raasteen
Group General Counsel, ISS*



As a leader you have to respect competence and let people find their own way. What matters is to focus on what they deliver.

*Anna Rogmark
General Counsel, Director HR & Sustainability, Apoteket*

On a personal level, one of the first steps you can take is to develop awareness of your own biases and preferences.

On a personal level, one of the first steps you can take is to develop awareness of your own biases and preferences so you can mitigate the impact they may have on your decisions, enabling you to lead in an inclusive and fair way. You can also help by mentoring younger lawyers, and lending your support to programmes that help to break down barriers to progress.

In your legal department, there are dozens of initiatives that you can undertake to support equality, ranging from so-called 'blind' recruiting to promoting flexible working and other practices that make it easier for team members who might otherwise be disadvantaged to continue to advance their careers. You can aim to address unconscious bias – both in the team and in the wider business – and unthinking cultural assumptions. You can end any gender pay gaps. You can make sure you are seen as a leader and advocate for equality. You can also, of course, encourage your external providers of legal services to do likewise.

The pandemic has raised additional issues in this area. Perhaps most notably, it has clearly accelerated a move towards flexible working. And while this may be beneficial for some staff, as we've already noted there is a risk that those working remotely may sometimes be disadvantaged if other colleagues are working in the office. While staff may choose (or be asked) to work remotely for many reasons, a number of studies have suggested that the trend may tend to disadvantage women. The UK's Fawcett Society, for example, says it may result in a 'two tier workforce', with many men more able to return to work, while many women are forced to juggle remote working with caring for children, thanks to the now more limited availability of alternative provisions for childcare. There are risks that those working at home will – intentionally or not – be discriminated against, with discrimination ranging from not being kept in the loop to being overlooked for promotion.

We have only looked at gender equality here, but you will also want to consider issues of equality in areas such as age, disability, race, religion and belief, and sexual orientation.

79. Do you encourage diversity?

There are countless definitions of diversity, and assessments of its value. Some businesses are already fully committed to it, others are a long way behind. Some understand the ethical argument for diversity, but fail to appreciate the commercial arguments too.

To provide one example of what diversity can mean, this is our own firm's diversity statement.

As an international organisation with clients and employees spanning a multitude of countries, cultures and professions, diversity is of fundamental importance to CMS. Our commitment to promoting diversity and inclusion is broad, encompassing the following.

- *Developing and supporting a diverse workplace in which all are welcome regardless of gender, marital status, race, colour, national or ethnic origin, social or economic background, disability, religious belief, sexual orientation or age.*
- *Creating an environment that encourages new ways of thinking and working, and values the contributions and perspectives of all – especially those with experience, ideas and work styles different from our own.*
- *Supporting all staff with a broad range of policies, practices and procedures which recognise individual contribution and performance, develop each individual's capability and give everyone an equal opportunity to use their talent and fulfil their potential.*
- *Providing a workplace free from discrimination, harassment and bullying, where everyone is treated with dignity and respect.*

Some of the points covered here that might be of interest to a GC thinking about diversity include its inclusivity (it's not just about sex or race), its connection to innovation and different ways of approaching problems (helping to avoid the groupthink we discussed in question 56), its relevance to globalisation and international business, its attitude to maximising the use and value of talent, and its promotion of a well-functioning workplace.

GCs need not confine their support of diversity to their own company. They can encourage it among their suppliers. In March 2019, 65 GCs from major companies in Europe signed a statement urging law firms to get better at diversity, with a group of them now working on shaping a diversity and inclusion framework to help the legal sector make tangible progress in a collaborative manner. Many more are engaging with their individual law firms on the issue. We have noted a growing number of GCs who make diversity (and equality) a requirement for their panel firms, or refuse to instruct external providers who do not meet specified standards for diversity and equality.

80. How credible is your team?

Are you happy to put your lawyers in front of management? What does the business think of your team? Our research has shown that GCs tend to have a better opinion of the legal team than people elsewhere in the business. That's not surprising, but it does imply that GCs who don't collect structured feedback on their people from around the business may be over-estimating the impact of what their team does.

If the team lacks credibility, it's the GC's job to get them up to speed.

Ideally, everyone in the team would be a sort of GC-in-waiting, with all the GC's skills, experience and authority. For example, we noted above that a modern GC needs to be financially numerate. But it's not just the GC. As Bjorn Raasteen says on page 62, "it's really important that all our lawyers can understand the numbers and how we influence them, and appreciate the basics of accounting – when will this hit the P&L, what line will it hit, what is the balance sheet impact?" The same is true in many other areas.

If the team lacks credibility, it's the GC's job to get them up to speed.

81. Do you own your mistakes? Do your team own theirs?

You may think that's an odd question to ask in a section on the team, or even to ask at all. But some lawyers can find it difficult to admit mistakes, fearing that it will damage their image (or self-image).

Lawyers also tend simply to dislike being wrong. Many have, to some extent, what are now commonly termed Type A personalities. These are defined in the American Psychological Association's *APA Dictionary of Psychology* as being characterised by, among other things, "chronic competitiveness, high levels of achievement motivation, impatience and a distorted sense of time urgency". This contrasts with Type B individuals, at the other end of the spectrum developed by Friedman and Rosenman in the 1950s, who "typically do not feel the need to prove their superiority or abilities." If you are a competitive and highly motivated high-achiever, it can be tough to accept that you've made a mistake. But accepting and 'owning' mistakes is ultimately good for both the individual and the business, for a number of reasons.

- As a matter of good governance and risk management (as well as, probably, compliance) a GC should be informed as soon as possible when a mistake is made. You should also be able quickly to judge its full extent, which requires full disclosure.
- A highly regulated business may be obliged to follow a specific procedure for dealing with certain mistakes, which again requires prompt and full disclosure.
- A mistake may be an indicator of deeper problems – for example, it may have been based on wrong information, or an earlier undetected mistake. Or it might suggest that the person who makes it is under excessive pressure or has other difficulties. You need to know whether there is an underlying cause.
- Everyone makes mistakes, sooner or later. Your team need to have confidence that making and then admitting to an error will not result in damage to their careers.
- A mistake which is brought, non-judgmentally, into the open is easier to learn from and avoid in future.
- The fear of making mistakes or demonstrating weakness can be detrimental to performance, even if no mistakes are actually made. People who know it's culturally acceptable to err, or admit ignorance, or in some other way be imperfect, may in the end do better work.
- The acceptance of mistakes when people admit them is one indicator of an open culture. It sends positive messages to your team about trust, authenticity and honesty.

For this type of open, no-blame culture to take root, the GC has to set a good example. Which is why it's important for you to own up to and 'own' your mistakes.

In another sense, you will have to own the team's mistakes too. If you're the GC, "the buck stops here". You need to be open with the business about mistakes, and any consequences, without seeking to blame your team.

A mistake which is brought, non-judgmentally, into the open is easier to learn from and avoid in future.



A good way to describe an in-house lawyer is as a specialist in the business and a generalist in the law.

*Eduardo Dominguez-Adame Bozzano
Group general counsel, Urbaser*

Buying legal services

82. How do you procure external legal services?

Or perhaps it's more fruitful to ask: how much do you think about how you procure external legal services? There have never been more choices available to the GC, in terms of the variety of law firms and other providers of legal services. New forms of relationship – and fee arrangements – are available. Services such as flexible lawyering can make a real difference to the way the in-house team functions. If you have procurement managers in your team or elsewhere in the business, they will be keen to tell you how smart purchasing can result in considerable gains.

Despite all these choices, many GCs continue to instruct their law firms in a traditional way. Their reasons vary, but a common rationale is that, while this may not be a perfect system, it has advantages others lack. The same is true of traditional hourly billing: in many cases it has been superseded by alternative fee arrangements, but in other cases the GC and the law firm continue to use it because it provides a flexibility that both parties appreciate. Some GCs opt to use the traditional approach for complex high-value work but prefer an approach such as fixed fee arrangements for work that can be more readily commoditised.

As a GC, you will be accustomed to buying legal services, and will probably have arrived at a preferred approach. But it is worth keeping that approach under review. Your needs, and what you may be able to obtain from legal service providers, will both change over time. Often that change will be incremental and may go unnoticed. In other cases, a major event – perhaps corporate restructuring, or a need for significant levels of advice in a new jurisdiction – may prompt a reassessment.

Many GCs run periodic panel reviews, but it's just as important to review *how* panels are chosen. The focus needs to be on establishing processes that will secure effective outcomes. These may vary from business to business, so simply adopting processes because other businesses use them is likely to be inadequate.

The GCs who are most effective in this area are also likely to be able to understand and reflect their personal preferences and working styles, without letting them unbalance the objective business-driven assessment of potential processes. Emphasising the importance of process should not automatically lead to a highly system-driven approach to procurement if other models (potentially including more bespoke 'traditional' relationships) can be justified in terms of positive outcomes.

83. How do you measure the value you get from your external lawyers?

Just as GCs can benefit from using KPIs for the in-house legal team, there are strong arguments for using them when managing external providers.

The GC needs to be clear about what is being measured. They can only decide what KPIs to use when they are clear about what constitutes value, and the relative emphasis they wish to place on, for example, outcomes, absolute costs, service levels, 'value-adds' etc.

The GC's key role is that of a bridge between the business and the external provider.

The GC also needs to agree acceptable service levels with the provider before the work starts, and to be very clear about what their priorities are, and what will constitute a successful outcome. There is no obligation on a GC to tell an external provider how their services are being gauged, but it is usually beneficial to be open about it. An awareness that KPIs are being used may encourage the provider to up their game. They may also share their own data with the GC. If rolling KPIs are used – rather than the static measurement of the outcome achieved once the matter is closed – they may provide an early objective indication of any problems that are arising in the course of the work and that could usefully be addressed.

Using KPIs across multiple matters will in time give the GC a useful set of benchmarks against which to judge future performance. They may also be useful internally, whether to demonstrate value to the board or to compare the way different parts of the business use legal services.

84. How do you manage external providers of legal services?

In some respects, the GC's key role is that of a bridge between the business and the external provider. In the words of Aneta Martišková on page 29: "I'm kind of a translator and transmitter between the business and external lawyers." Many other GCs have told us that no external lawyer could understand their businesses as well as they do themselves.

The idea of translation is just as important as that of transmission. The GC has to use their knowledge of the business to interpret its messages for outsiders, as well as using their legal understanding and insight into how the business thinks to communicate messages about the law and regulation in a way that makes sense to non-lawyers.

There are plenty of guides for in-house lawyers on how best to manage their external providers. At the highest level, their advice is generally that the GC needs to be organised and active, from initial briefings – which should be comprehensive, and should clearly scope a project and set out expectations – to the final bill. They also offer more detailed views on everything from costs management software to the use of project milestones.

Two bigger issues are sometimes overlooked by GCs, but can make a massive difference to the way in which they work with external providers of legal services.

The first is a need for trust and teamwork between client and provider. In the words of the *State of Corporate Law Departments 2019* report from Thomson Reuters and Acritas: “Panels, in theory, should be the perfect foundation for implementing business partner relationships between in-house and external lawyers which deliver optimal value. In reality, the mismanagement of panels results in weaker relationships in one-third of cases ... To get the best from a panel, law departments need to be open, fair, and transparent, treating the external lawyers as part of the same team.” Where necessary, GCs also need to make it their job to ensure that their panel firms can co-operate with each other as part of the same team and work well together in the interests of the business.

The GC has to know what’s important to them in their relationship with an external provider, and make sure the provider knows that too.

The second issue, which we touched on earlier, is that the GC has to know what’s important to them in their relationship with an external provider, and make sure the provider knows that too. Both parties need to focus their energies on making sure that what’s important goes well. If a GC doesn’t value something, their providers shouldn’t waste time and money in giving it to them. Equally, the GC should have a pragmatic approach to the question of whether to escalate trivial problems or irritations, if doing so risks reducing the focus on more important issues.

85. How will you be using external lawyers in five years’ time?

We’ve heard some GCs say they will be using external providers more in five years’ time (e.g. because low-value work will have been outsourced, leaving the in-house legal team to focus on what is key for the business). We’ve heard others say that they will be using external providers less (e.g. because continued growth in the legal team, or the introduction of new systems, will have made the business less reliant on law firms).

GCs will want to map out their future needs in the light of corporate strategy and targets. What legal provision will the business need to achieve its long-term goals? And what legal services will it need once those goals are achieved? What will be the optimal way of splitting those services between the in-house team and external providers? How will developments in technology, regulation or other areas improve the ways in which legal services providers can meet your needs?

We haven’t heard of GCs saying to their preferred providers, “this is what we think we’ll want five years from now. This is what we’ll expect to pay for it. Are you going to be able to deliver it?” But might it be beneficial, for both parties, if they did?

86. Are you a good client?

Axiomatically, the customer is always right. But some customers may be ‘righter’ than others. The onus will always be on the service provider to deliver what is needed, at the right time, for the agreed price. But there are things the GC can do (or avoid doing) that will make this more likely to happen.

It is common for law firms to run post-matter reviews. In-house legal departments can benefit from doing so too. It is always worth asking, with an open mind, what one could have done better, and learning from that for the future.

Similarly, many service providers actively seek client feedback. There is no reason why GCs should not, in return, seek feedback from their providers. Insights gained from structured feedback may help you improve your purchasing processes, methods of communication or project management.

Although the business is the true client, your external providers will tend to see you, and possibly other senior members of your team, as their clients. When they talk about ‘client satisfaction’, their primary concern is whether you are satisfied. When they talk about ‘difficult clients’, they are talking about people rather than companies. And just as a provider can become a better provider, a client can become a better client, and help to forge a more effective working relationship.



Maria Rocha Barros

Senior Vice President and Chief Legal Officer of Booking.com

Maria Rocha Barros spoke to us in her previous role as the Vice President of Legal & Corporate Affairs Europe for Anheuser-Busch InBev.

My number one priority is having an engaged team. That's the secret: believing in the power of teams as more than the combination of each individual's capabilities. If you have a motivated team, that knows how to collaborate with each other, with a clear view of the direction of where the company is going and how the legal function can enable it (in the right way), they are going to achieve great things together.

In my experience, it is also helpful to have a 'dream' for the function, where we all agree what we want to accomplish together, that can be measured and tracked. This is very much AB InBev culture: to dream big, open gaps, give people new challenges every day and then chase the results.

How do you come up with a dream that speaks to people in different jurisdictions, cultures and roles? (My team had people in compliance, media relations, government affairs, commercial lawyers, to name just a few.) We brought people together from different places and had an open conversation about our main gaps and opportunities. And once the team got together, they started to brainstorm and find various ways to measure the value we bring to the table.

The biggest challenge is how you connect everyone.

We decided we would focus not just on value we protect (e.g. winning a litigation against the company and not having to use the provision) but also value creation (e.g. claims against cartels cases where we have been overcharged).

We gave ourselves a five-year dream of creating 'x' million dollars in value and protecting 'y' million, along with some other KPIs. And we announced them as our dream, and set out a playbook with methodology on how we calculate it. The numbers we achieved at the end of each year were, in many cases, verified by the Finance team. So I was able to report regularly, with a high level of credibility in the numbers, to the CEO on how we were doing.

This helped me make a better case for budget and in giving the HR team a better idea of the importance of different roles in my team which later helped in levels of seniority being recognised. And it gave a sense of purpose to the team, a feeling of being part of something 'bigger', as well as recognition (when management congratulated the team on their performance).

The biggest challenge is how you connect everyone. I wanted to prevent silos and get people working together cross country, with lots of synergy. I also wanted to make sure we had common approaches in legal and corporate affairs, especially in Europe, so we could agree cross-jurisdiction what would be the Legal team's position in relation to certain questions on antitrust (from an EU perspective) or a new global marketing campaign for example.

My number one priority is having an engaged team.

One way of doing that is to establish structures that allow for this collaboration. Aside from the teams located in the countries where we operate, we created in the function a "Legal Europe team" and a "Corporate Affairs Europe team" that helps us establishing such common positions and enabling the sharing of best practices. And we used this structure to coordinate pan-European projects with working groups with lawyers from different countries. For instance, we had one involving people from five different countries to review all procurement templates to be used in Europe and another one to create a knowledge database for food and labelling regulations.

My leadership style is decisive, but I also try to give people a lot of empowerment and autonomy. I'm clear about what I expect from them (every lawyer and corporate affairs professional at AB InBev has five targets) and, throughout the year, we discuss periodically how we are doing towards those targets and how I can help. Target achievement (which is usually an objective measure) determines how much bonus they will get.

I see my main role as a leader to help remove roadblocks for my team.

I see my main role as a leader to help remove roadblocks for my team and give them a sense that I 'have their back' (if they acted ethically of course). I always tell them: "My job is to make your job easier."

Be rock climbers

I never wanted to talk to my team about what they're not, but always to push messages about what we should be as a team. I told them always to aim high and an analogy I have used is that: 'We should all be rock climbers!'

I had been reading some books about climbing expeditions, and before reading those, I thought all rock climbers were people that took a huge amount of risk and did not care so much about their lives. But as I read more I understood how disciplined they are: how much planning was involved, how much time they spent calculating and planning for different scenarios, their discipline and ability to solve problems where things don't go as planned and how much it required a team effort with diversity of thinking and skills, I was inspired. To top it off, it is a job that definitely requires a lot of courage, which is the same for us in-house lawyers!

When I decided I was leaving AB InBev to change industry, and said goodbye to my team (one of the hardest things I have done in my life), I told them to continue to be rock climbers.

Innovation and change

87. How innovative are you?

In our most recent survey of mainly UK-based GCs, 70% felt that innovative or complex legal work was very important in their role. But this concern for legal innovation did not extend to technological innovation. Few of them were really engaged with new tech, and only 36% felt change management was very important.

The situation is similar elsewhere. When we surveyed GCs in Singapore, we found that a quarter felt they were innovative, with another quarter feeling they were not at all innovative. The remaining half felt 'a little bit' innovative.

There is little in the way of common ground between the innovations of GCs in different companies.

We have also found, interestingly, that there is little in the way of common ground between the innovations of GCs in different companies.

Why are GCs not more proactive in seeking ways to improve what they do? The answers include budgetary constraints, the conservative outlook of some GCs (and businesses), and the feeling that corporate culture will not allow experimentation or failure in the pursuit of innovation.

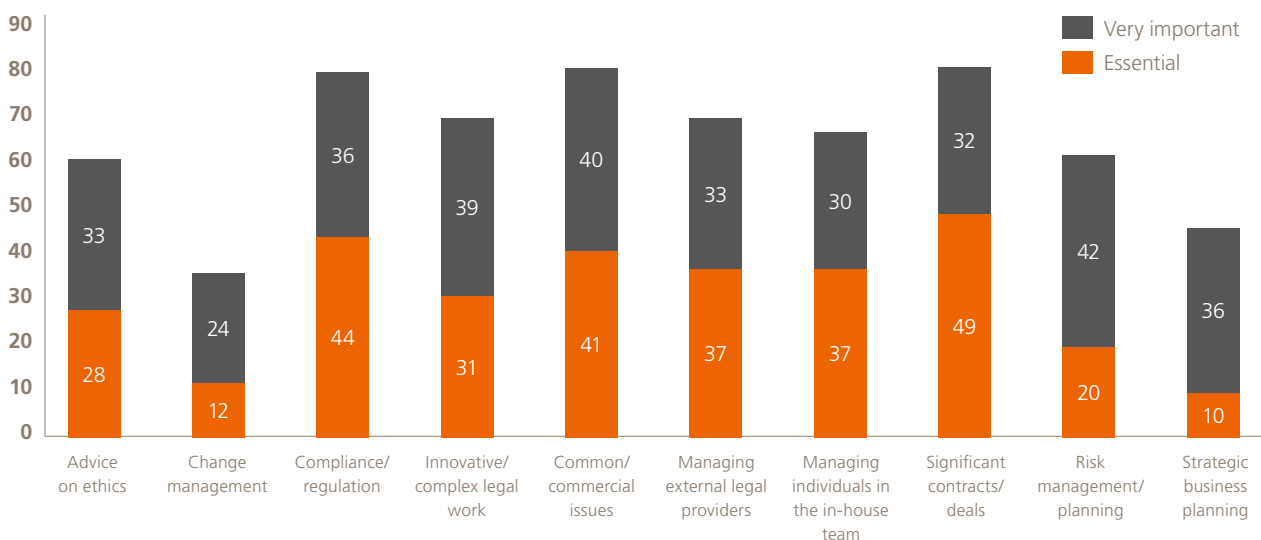
In many businesses, if the legal department is broadly delivering what the business requires, there may be little enthusiasm for the disruption of change. 'If it ain't broke, don't fix it' is a common maxim.

But perhaps the most prevalent reason for the limited extent of GC innovation is simply a lack of time. As we suggested in question 61, a GC who spends their days firefighting, or in an endless succession of meetings, with a bulging inbox and a busy department, lacks the space they need to step back and consider bigger, more long-term issues. In some organisations there is also the familiar paradox that the team are too busy working round the deficiencies in existing systems to actually fix or replace them.

Innovation need not involve technology, although it often does. It is not many years ago that even appointing an in-house lawyer was seen as an innovative step by many companies. Innovation is a category that can take in a huge variety of change, from action on diversity through better project management systems and ways of delivering the in-house legal service to a new fee structure or working arrangement for external legal service providers.

In the purest terms, innovation is about curiosity and improvement. It's a way of thinking and acting – a philosophy that, when embedded in a team, can bring benefits far beyond any particular project or system to which it may be applied.

How important are the following in your role?



Source: CMS 2016 report *General Counsel: Reaching new heights*

88. Do you own change?

What does it mean to 'own' change? Essentially, it means being open about change, accountable for it and committed to it. It means embracing new ideas and practices, and being seen to do so.

This is essential for change leadership. A GC who owns change enables their team to own it too. Unless your team feel they own the change, they will not engage in it fully.

There may be someone in your legal department who is responsible for change – whether a dedicated change manager or someone who is managing a particular project. But unless the GC owns the change from the start, and uses their influence to make sure that ownership is then taken up by the wider team, the change is unlikely to achieve all its objectives and potential.

89. Do you understand change management?

Successful change management involves handling every aspect of change, including preparation, support in implementation, and ensuring that its full long-term benefits are realised. Above all, it's a structured approach to the introduction of change.

Some people assume that change management is mainly a question of getting things done on time, like a cut-down version of project management. That is a long way from the truth. In many ways, the key aspect of change management as a distinct discipline, with its own arsenal of tools and techniques, is its emphasis on the people who are affected by change, and on how they handle – and support – the transition from one way of working to another. To be a successful change manager, you also need to understand how the effects of your change will spread through your organisation, like the ripples when a stone is thrown into a pond.

**The GC is a bridge builder.
They can help other people
achieve change by creating
routes over corporate chasms.**

There are many well-known change management methodologies. They have different strengths and weaknesses, and as this proliferation of models shows, there is no single answer to the question of how best to manage change. The GC can look for a model that seems likely to address their particular circumstances and challenges.

Whatever your approach to managing change, there are particular issues you will have to deal with. As we suggested above, the most significant – and possibly difficult – are likely to involve people.

You'll need to communicate effectively, get people onside (at every level), help them feel more comfortable with change, enable them to 'own' change, deal with traits such as 'default bias', and handle the stubborn 'holdouts' and 'diehards'.

The good news is that, properly managed, even the diehards can usually be persuaded of the merits of innovation, provided they feel their concerns have been recognised. As Marina Kralj Miliša says (on page 74): "People have to grow and change with the company – otherwise they cannot be good professionals in any sense. People who don't accept change cannot survive."

90. What can you do to facilitate change for others?

As we said at the start, the GC is a bridge builder. They can help other people in the business achieve change by creating routes over corporate chasms.

Corporates will often 'bring in' management consultants to ease the path of change. This works partly because consultants are seen as being independent. The GC enjoys a similar status, which they may, with some creativity, be able to leverage in the cause of enabling corporate innovation or change.

**Unless your team feel they
own the change, they will
not engage in it fully.**

Where change involves risk, as it often does, the GC also has an obvious role, in creating effective ways to assess and manage it – especially where it appears to be an unfamiliar risk. The GC's attitude to this is especially relevant in digital transformation and disruption from new technology: a GC who pushes hard to be a bridge builder and facilitator can materially aid the adoption of new systems, while a more inherently risk-averse or conservative GC may have the clout to delay or even kill a project with a disproportionate focus on potential risks. The GC may also be able to help devise workable ways to incentivise and reward change for teams or individual staff.

GCs should also not underestimate their ability to promote change among their external advisors. We mentioned earlier the trend for GCs to insist on certain standards for diversity or equality among the law firms they instruct. They can also push for changes to service models. It is entirely possible that as more GCs do this, they will act as catalysts for evolution among providers of legal services. As clients, GCs are arguably best suited to drive change in this area if they wish to – and they are also well placed to benefit from it by stepping up into a more strategic role themselves.



Marina Kralj Miliša

General Counsel, Končar

We have about 4,000 people, in an organisation structured as a holding company with 15 subsidiaries. So we're a small company in a European sense. But if you compare Croatia with Germany, then we are Croatia's equivalent of Siemens.

I'm the general counsel and I lead a team of about 20, mostly lawyers engaged on corporate matters. I also manage people doing other things, including HR – a function which includes a few lawyers but also has, for example, a psychologist.

My team are all in Croatia. When we need lawyers in other jurisdictions we go to law firms.

I also cover compliance from the corporate point of view. The FD is responsible for financial compliance. That reflects the nature of our industry. No-one has an overall compliance role.

The GC has to be a leader in change management, always adapting to new conditions.

I deal with management board issues and supervisory issues too. There's no Croatian equivalent of a company secretary role. We have a separate team to handle corporate governance, which is a significant issue with 16 companies in the group.

I've been at Končar for 30 years. When I started as counsel in the in-house team I was at the bottom. Over the years I climbed the ladder, and I'm now at the top of the legal hierarchy. I'm also a member of the board of management of the holding company. Most of the board are engineers: there are four engineers, an economist and me.

Our company is nearly a hundred years old. But change, and change management, are very important for us. We've passed through socialist regimes, with lots of production and factories. Subsequent changes and restructuring in the company and the country have left us with a lot of property – so of course we have property issues.

In recent years it's also become harder to recruit enough engineers. Many choose to go and work in IT companies instead. My HR team, including our psychologist, have to find ways to attract more talent and give them better options. We have to be creative and imaginative.

In an environment that's so changeable, our ability to change is a key factor in our success. People have to grow and change with the company – otherwise they cannot be good professionals in any sense. People who don't accept change cannot survive. That means the GC has to be a leader in change management, always adapting to new conditions.

We have to adapt to generational change too. My team is quite young, and there is quite an age gap: most of them are in their 30s, with three of us in our mid to late 50s.

The younger people see some things differently. And maternity leave has become a huge problem for us. We've changed our way of working to ensure that two of the team are involved in each project, to help with continuity. But that in turn means more meetings – although we work on the same floor and have daily interconnection and discussions.

One change which I think everyone has experienced is that regulation has increased. Over time that clearly means more demand for legal work, and so ultimately for more lawyers.

Change can also mean that new people are coming through who have not been at the company for long. We need to have young and ambitious people, but older people can add other things. My lifetime in the company gives me insights I probably would not have otherwise.

I can't predict what will be the biggest issues in the future. But it's clear that new technology will be important – in terms of the demand for it, and also the regulation of it.

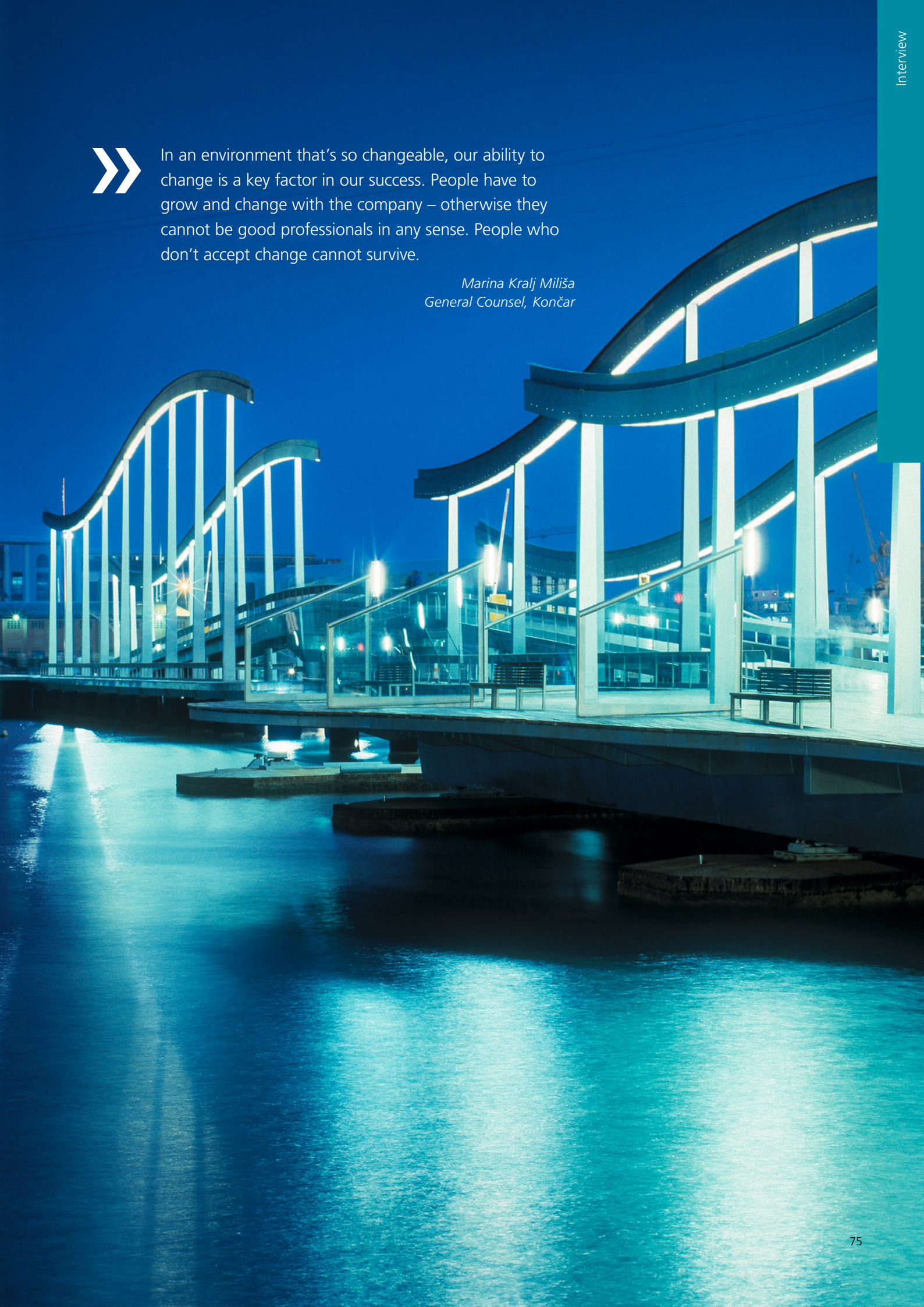
Cross-border work will also get more important. It's already a big part of our business, and it can only get bigger. We have joint venture companies and foreign investment, and contracts in Scandinavia, Africa and South America. We have also done work in South-East Asia, and we're doing business with China now. It's a very competitive, even saturated market, but the world is so globalised now that successful companies cannot confine themselves to domestic customers.

Over the years I have modelled myself on my first boss, in the 1980s. He was very open minded, with a very global outlook. His position in the company was very good. I hope I can be a similar model for young people, and have a positive influence on them, and maintain a positive environment in which people can develop and grow.



In an environment that's so changeable, our ability to change is a key factor in our success. People have to grow and change with the company – otherwise they cannot be good professionals in any sense. People who don't accept change cannot survive.

Marina Kralj Miliša
General Counsel, Končar



91. Are you innovating to increase your contribution to the business?

The average GC is not a real trailblazer for innovation. But some GCs are, and their innovations range from very technical fixes to some that clearly combine commerciality with creativity and even fun. Waldemar Koper's team, for example, "make MTV-style videos" to explain legal topics to the business (see page 39). And 'gamification' (i.e. the application of game-style methods to delivering other content) is an increasingly popular idea for applications such as teaching corporate compliance.

As we said above, not all innovation has to be tech-driven. A GC can innovate by, for example, holding drop-in advice sessions (whether real or virtual) for people from other parts of the business, or introducing more flexible employment policies. The trend for 'Legal Design' – which, broadly, involves redesigning legal documents such as contracts to include graphics, flowcharts, simple explanations and other innovations that make them more accessible to non-legally trained end-users – deploys technology, but much of its output could be replicated by an averagely competent user of Microsoft Word.

Any GC can innovate, even if they have no team and no resources. They might need to do so: it's often said that necessity is the mother of invention. But they might also innovate because they want to – because they have been creative enough to see how, even with their limited means, they can improve things for themselves or the business. Your attitude to innovation, and your success rate, are not determined by the size of your team or your budget.

92. Do you know what AI and advances in information technology can do for your work?

The *General Counsel Barometer 2019* from Wolters Kluwer (which is weighted towards the UK but includes GCs from elsewhere in Europe) found that 57% of the GCs interviewed expected their company's investment in legal technology to 'increase slightly' in the coming year. Only 15% thought it would increase greatly.

That accords with the impression we have formed from talking to GCs. Legal departments are gradually investing in legal technology but it is a slow process, partly because many of them simply lack the management time properly to evaluate the options. Some find budgeting for new technology to be challenging. (All but a few will struggle more for resources in this area than the major private practice firms they instruct.) And many are acutely aware of the potential difficulties of bedding in a new system – especially a specialist system which may not be well understood or supported by the business's own IT staff but which is likely to have to integrate with, or at least 'talk to', the business's existing systems.

Such considerations have left GCs lagging behind both private practice law firms and the wave of 'new law' legal service providers in the adoption of new technology and innovation in areas such as the use of AI. There will probably be a levelling-off in time, not least because legal departments will become familiar with the tech offerings from external providers, and thus be in a better position to scope and implement their own.



Over the next ten years it will be really interesting to see how much technology changes the in-house legal function.

*Erik Warberg
Head of Legal & Procurement, Avinor Flysikring*





Erik Warberg

Head of Legal & Procurement, Avinor Flysikring

Avinor Flysikring is the sole provider of traffic control services for Norwegian airspace. Before joining Avinor in 2018, I worked in IT and the defence sector both on the public and private side for many years, including seven years in charge of legal and compliance matters at Thales Norway.

The role of general counsel has expanded a lot recently. And there are a lot more GCs – not just at the big companies but in the medium-sized ones. At Thales I was the first GC back in 2008. They didn't have that position before. And I began alone, but by the time I left I had three contract managers reporting.

When I started in the role, I had some challenges convincing the business managers to ensure that the legal team was involved at an early stage in a project. Now, I think most businesses recognise the value in doing that. It means the legal team can spend less time fighting fires and more times preventing them, which is much smarter.

Compliance has also been a big factor in change. During my time at Thales, we went from nine areas to monitor up to 18. We went from a basic compliance programme to an enterprise risk management programme – both for the business and for individual projects. It became much more sophisticated.

However, I also think there has been a change in the attitude of GCs. Nowadays, they are more prepared to roll their sleeves up and go out into the business looking to address issues proactively. When I started, a certain reluctance to be part of the business team was much more common, to keep some sort of independence.

GCs are now much more commercial. I personally know several in-house lawyers who have become CEOs. My ex-wife was in-house counsel at a newsprint company. She moved into marketing, as a VP responsible for sales, and went on to be CEO of one of Norway's largest timber operations. She decided to make the journey into a leadership role from an early stage. A neighbour of mine was GC of a large oil service company, and moved on from that role to a CEO role. And I know another legal director who moved to become a director of strategy and then CEO.

I don't think so many GCs move into CFO or COO roles. The CEO role is a more natural development. Good CEOs have the ability to tell a story, to deliver a message. Lawyers also do this, in court and in meetings. We have the ability to understand different aspects of a situation and explain them simply.

What's also essential, of course, is to go beyond being a pure lawyer to understand the business in order to handle business risks and opportunities. Any good in-house lawyer is prepared to do that, but only those who really embrace it can become CEOs.

My role at Avinor combines the GC role with being in charge of all procurements. This role works to a large extent with our project organisation, where one of our key responsibilities is to facilitate good procurement processes and contract management throughout the lifespan of the projects. My recent background from the IT business, where I worked on how to utilise knowledge and technology to solve problems in governance, risk management and compliance, in an efficient and business-friendly way, has proven quite valuable.

What we see in Avinor is the need for digital governance in order to handle the vast complexity we are exposed to. The competence within the legal field now starts to include AI and machine learning, and lawyers in Norway and in Avinor need to get involved with legal tech and regtech. It's very clear that legal process technology is going to be one of the biggest issues – perhaps *the* biggest issue – to affect in-house legal teams and the law profession in general. It's still at the very early stages of development and implementation, but it's going to have a major impact.

Artificial intelligence and machine learning are driving new approaches to contract drafting and review exercises. People see that suddenly drafting contracts can take not ten hours but ten minutes. On due diligence, you no longer have to have 25 junior lawyers in a room to go through documents.

The big law firms have hired chief digital officers – some with backgrounds as technicians, some who are lawyers – to investigate the possibilities of new technologies. They recognise that they have to reconsider their business model, although they don't know exactly how. What they do know is that they have to be ready to change when the right tools are ready.

I started by saying how much the role of GC has changed. Over the next ten years it will be really interesting to see how much technology changes the in-house legal function. What I can say is that we at Avinor are determined to be proactive and utilise IT tools and new competences in order to evolve our business for the future.

There are a few GCs, particularly in tech companies, who have been successfully innovative. Some have done deals with external legal service providers to get access to systems which they can, at least in part, run themselves. But most would admit that they don't really know what their options are, or how useful those options would really be. And while they are sure that major developments are coming in areas such as automation and AI, they tend to be unsure about what those developments are – although some of them have expectations of deploying blockchain and possibly 'smart' contracts.

For Erik Warberg, on page 77, "It's very clear that legal process technology is going to be one of the biggest issues – perhaps the biggest issue – to affect in-house legal teams and the law profession in general. It's still at the very early stages of development and implementation, but it's going to have a major impact ... Over the next ten years it will be really interesting to see how much technology changes the in-house legal function."

It's a myth that technological innovators need to understand technology. The most important skill for a GC introducing new technology is nothing to do with tech knowhow. It's the ability fully to analyse and understand the problem or business need that the technology is required to resolve, or the aspects of current practice it can improve.

Corporate history is full of executives who bought the right solution to the wrong problem. These days it's not hard to find out what technology is on offer. You can talk to your peers about it, discuss it with the people who would like to sell it to you, or even look for it on the internet. But that won't tell you what your problem is in the first place. And it's easier to buy or build an app, for example, than it is to persuade people to use it, unless they can see that there are real and immediate benefits for them in doing so. Having a clear communication strategy to win hearts and minds is a much-underestimated aspect of the successful adoption of new technology.

GCs who are already respected, successful and influential within their companies may find it easier to introduce innovative technology than those who aren't. Again, this emphasises the importance to the GC of being able to demonstrate their value. A business which doesn't understand what value the legal department adds in the first place is unlikely to see the additional value that new technology would bring to it. And a respected and influential GC is more likely to win the sort of management backing needed for a successful roll-out of technology. GCs starting from a lower base may prefer to be pragmatic and seek easier and cheaper wins, even though the prospective gains may be less substantial.

93. Do you leverage the company's existing tech and systems?

The GCs we talk to from tech companies tend to be more innovative and more advanced in their use of technology than GCs from many other businesses. It's easy to see why: they have access to a lot of relevant expertise and resources, and often a culture in which spending on significant tech projects is seen as quite normal. Some have told us that, in fact, they have been pushed to keep up with the business. Companies whose other units and processes are highly tech driven can be unhappy if they see the legal department lagging behind.

For these tech GCs, it's easy to get a lot of extra value out of the company's systems. Others may find it a harder proposition – but many companies have systems that would be useful to the legal department with only minimal adaptation. Sometimes the department already has access to these systems but lacks the expertise to use them to their full advantage, or is even unaware of their potential.

It's always likely to be worthwhile for the GC to spend time exploring the possibilities that exist, metaphorically, under their nose. They can try to build bridges between the more tech-literate members of the legal team and people from the IT team, so that the IT specialists can understand the legal team's problems and wishlist, and the legal team can get a better idea of what the existing systems are capable of.

It's a myth that technological innovators need to understand technology.

It's also worthwhile for the GC to ensure that they, or another senior lawyer from the team, are involved in the scoping and procurement of any new tech or systems. This offers the chance to influence the choice and adoption of new systems, giving the legal team not only the opportunity to help control major project risk but also insight into how new technology may be helpful to the legal function.

94. Do you 'sweat the small stuff'?

You will usually be advised not to. And as far as it goes that's good advice. We all need to have regard to priorities, and major matters will inevitably get most of our attention.

But small changes can be disproportionately influential, and incremental changes are sometimes a more effective way of achieving progress than blockbuster all-in-one reforms.

It's worth taking time to think about what small, easy-win changes could make a real difference to the company or the operation of the legal department. Your team are likely to have views on this too: they probably spend more time dealing with systems and procedures than you, and may be able to spot the points at which friction exists and could easily be smoothed out.

You need a clear understanding of the problem and the ability to put your solution into practice.

95. Is there really 'no such thing as a free lunch'?

Certainly not – the world is full of metaphorical free lunches, if you know where to look. In most organisations, there is scope for changes that will make a difference to the in-house department and won't cost you anything.

These may not be the changes you most want to make, but avoiding financial hurdles makes them among the easier ones to achieve. And any good GC – in fact, any good manager – is pragmatic about things like that.

By all means fight hard to make the major changes you think are necessary. But don't let that divert you from the benefits of lunching on the low-hanging fruit in the meantime.

96. Is there something you can do that would be genuinely good and that no GC has previously done?

By definition, we don't know what that's going to be. But you might. And few things will get you noticed and respected more readily than genuine innovation.

Whole libraries are available on lateral thinking, creative thinking and thinking outside the box. They are awash with inspirational quotes from famous people about creativity. But in truth, the only things you really need are a clear understanding of the problem, and the ability to put your solution into practice. The first is vital: there's no substitute for clear analysis of a situation, and it's something lawyers are generally good at. The second is likely to be harder: it may involve organisational, managerial and leadership skills. And the more innovative you are, the more challenging it may be to take your idea forward. Nevertheless it's essential, if your great idea is going to avoid joining the museum of other great ideas that never worked in practice.

The analysis of your problem, and the ability to make your solution work, are like the two slices of bread in a sandwich. The filling – the innovation – will be much more about you. It might be anything from a wildly original idea to a smart tweak to existing processes, arrived at by careful number crunching. Or anything in between. Maybe it will be new, maybe it will build cleverly on what has already been done. We've met a lot of lawyers who think they're not creative – but there are many different sorts of creativity.



As a GC you have to have credibility as a lawyer, but also as a person. How you behave is important.

*Katharina Schelberger
Leiterin Konzernrecht und Vorstandssekretariat, ÖBB*



Juhani Ristaniemi

Senior Vice President, General Counsel
EMEA & Asia Pacific, KONE

KONE is a highly international company operating in over 120 countries. We have our own people on the ground in over 60 countries and local legal functions in 20 countries. We have 25 nationalities in our legal team of 70 or so lawyers plus other legal professionals.

I would not hire a lawyer who didn't have the potential to be a leader in some other field as well.

We have a variety of solid reporting lines and dotted lines to handle this. I used to think legal has to report solid line to legal. Although we also have moved in that direction, I don't any more believe solid line reporting lines matter so much, as long as you have the right people in the right positions with a clear role description and a clear matrix reporting structure. They need a relationship with me, but they need one with the local business leader too. They need the full trust of legal and business managers.

We only recruit people with a positive mindset towards working internationally. But we don't necessarily send them abroad. People have to be able to speak the local language. I can't send someone to China, which is now a huge market for us, if they don't speak Chinese. The international mindset is however key for working as a global ever-developing team with a strong ethical backbone.

When we recruit, we're really looking for well-rounded lawyers of a calibre to warrant a position on their local leadership teams either now or in the future. The phrase we use is 'business people with legal minds'. I would not hire a lawyer who didn't have the potential to be a leader in some other field as well.

About 15 of our people have gone from legal to other roles – MDs of subsidiaries, heads of business lines, head of strategy, etc. KONE culture is very open to people taking on challenges and pursuing them, whatever their background. Personal development is important for everyone, whether they stay with the company long-term or not. It's a way to increase their chances of going further if they want to, but makes them better at legal too. It enhances their perspective and credibility.

We also run a performance evaluation process linked to every lawyer's incentive structure. At the end of a year, a 60-second feedback questionnaire is sent to key stakeholders, asking them to evaluate that lawyer's work in terms of factors like added value, response time and overall performance. Managers are also judged on how well their subordinates perform.

What do we offer lawyers that a law firm wouldn't? Above all, exposure to the full breadth of international business with a very wide range of legal and other issues. It's not the place for you if you just want to be the best specialist in the world. The legal world needs both generalists and specialists – we're a better employer for one type of person and a big law firm is better for the other.

But we are now such a big organisation that getting alignment means we do have to invest in centres of excellence. So we do have individuals who do things like antitrust and data protection. I still believe corporates are places where you can be an all-rounder but the realities of the increasing regulatory environment are making me give up on that a little bit.

In the same way, we separated the compliance function from legal, although we continue to support them. We realised we needed a team with different, specialist skills and aspirations – not just lawyers, but also contract managers, legal admin specialists, and compliance professionals with diverse educational backgrounds.

Working in a big company brings other challenges. How do we ensure our policies, values and guidance reach these people? How do we cascade information to reach every level? Over 95% of our staff are outside Finland, and below leadership level we are not an English-speaking company.

Part of the solution in legal is to have the right mix of local and global people with the right mindset and relevant skills. Give them clear ownership of a business unit or discipline,

There's a lot of scope for innovation in things like Legal Design.

help them become an integral part of the team they serve and empower them to add value in any way they can.

Another answer is innovation. As a company we have to innovate with our customers. And it applies to lawyers as well. For example, we can change the ways we communicate. There's a lot of scope for innovation in things like Legal Design: looking at how we can design the documentation and messages from legal in a way that non-lawyers can understand.



When we recruit, we're really looking for well-rounded lawyers of a calibre to warrant a position on their local leadership teams either now or in the future. The phrase we use is 'business people with legal minds'.

Juhani Ristaniemi

Senior Vice President, General Counsel EMEA & Asia Pacific, KONE



Outside the business

97. Are you a thought leader?

We have talked a lot about the GC's influence within the business. But how influential are you outside it? Are you one of those GCs who is admired by their peers and who makes a positive contribution to the profession?

Not so long ago, the chances for a GC to raise their profile and build their brand (and that of the business) in this way were limited. Now, though, there are more events to speak at (even if many are, at the time of writing, virtual), and many journals, websites and magazines to which you can contribute. The rapid growth of the profession has greatly increased the opportunities for this.

So has the rise of social media. Many GCs now have an online presence, which they use to promote their ideas – which may be anything from niche legal points to the big issues such as influencing legislation, encouraging pro bono work or promoting diversity. It's not necessary to make huge statements. Blogging and tweeting can get you noticed too, and may in fact often have more impact.

98. What do you give back?

GCs have a huge amount to offer their communities – both the communities they live and work in and their professional communities.

To take the latter first, they can become thought leaders (see the previous question), as well as being active in professional associations. They can set a good example in matters such as improving access to the profession, setting higher standards, mentoring more junior lawyers, and introducing successful innovations.

More widely, a host of options are available to the GC who wishes to 'give something back'. They include pro bono work, the trusteeship of charitable bodies, directorships and lobbying. Some GCs have co-operated with their preferred law firms on charitable and social initiatives. GCs from minority backgrounds often become powerful role models for younger people who want to succeed, as well as advocates for (and agents of) change.

In the longer term, some GCs who have been successful in business make the long-term decision to move into a public sector or charity role on a permanent basis. Clearly this is a very personal choice, but for them it is the ultimate way to give something back.



The biggest challenge is how you connect everyone.

Maria Rocha Barros
Senior Vice President and Chief Legal Officer of Booking.com

The future

99. Have you got an active succession plan?

Whether you have months, years or even decades to go, you will one day leave your role as GC. A key part of your job – not least as a risk manager – is to make sure that what happens next is appropriately controlled.

There are some obvious points to consider. Unless you leave because of a merger or restructuring, someone will have to replace you. Will you choose – or help to choose – them? Is there an obvious successor in your team? If not, do you intend to put one in place? Or will you rely on making an external appointment?

Your departure is the final change you need to manage.

If you're making an internal appointment, you'll need to make sure that person has the right skills – and the right image. If people are used to seeing your successor as a more junior lawyer, possibly in a limited or specialist role, how easily will they adapt to seeing them as a GC? Will the new GC have the necessary authority? A clear succession plan – which includes actions beyond the legal department – can help.

An external recruit may find it easier to impress at first, and is more likely to enjoy a 'honeymoon period'. But they may also make the legal department more nervous and uncertain about the future. It's up to you to make sure it's appropriately robust.

In either scenario, you'll plan an appropriate transition or handover period. But what if you have to depart suddenly, perhaps because of illness or some other sudden change in circumstances? A large legal department will probably be able to function adequately, at least for a time, without its leader. It will have a number of other experienced people in senior managerial roles, and a temporary command structure should be easy to put in place. For a small legal department, on the other hand, the sudden departure of the GC can be massively disruptive. And succession planning generally can be harder to arrange in small companies, where there are fewer options and resources.

Whatever the circumstances, your departure is the final change you need to manage.

100. What will your legacy be?

You won't be able to leave things neat and tidy when you leave, with a clean desk and everything filed and finished. There will be some projects that your successor has to complete, and some matters that you can't conclude. A more important issue than a clean desk – and one that you need to consider well in advance – is what your legacy will be.

Your legacy could take many forms. It may be very specific or general, or both. In one of our previous reports Jonathan Stevens, looking back on his time as head of litigation at Atos, explained how he transformed his department, and introduced a case management system that worked across many jurisdictions and saved the business tens of millions of pounds. But he was also proud of the way in which he had nurtured junior lawyers and helped them develop their skills – both legal skills and soft skills. "I think it's important to feel when leaving a role that you took that role to a new level and left behind a positive legacy. I think that's mine."

101. What is your legacy to yourself?

The previous 100 questions have been about you as a GC. However, at some point you will become a former GC. Question 100 looked at what you might leave behind. But what will you take away with you? If you are moving into a different role, are you taking relevant, transferrable skills? If you're retiring, have you kept enough of a 'hinterland' outside your work to keep you happy and occupied? Have you got a network of friends and contacts that will be relevant in the next phase of your life? At a very practical level, have you got a pension or other income that's sufficient for what you want to do next? Will you be able to take pride in what you've achieved as a GC? If not, what would have to change for you to be able to do so?

It's hard when you're in a job to know how your time in that job will seem to you once you've finished it and are looking back on it. Nevertheless, it's a question worth asking.

You're probably used to pieces of thought leadership that are packaged with 'key takeaways'. This report doesn't have them. But it has a final question for you: what will your own key takeaways be from your time as a GC?



The 'Bridge Model'

This report has been an invitation to consider key topics, rather than a how-to manual. We tried to avoid a 'tick box' approach when writing it. Few of the issues involved are binary and many of the problems it covers do not have easy answers.

However, some of the GCs we have talked to about these topics have said they would find a related tool or set of metrics helpful.

No tool could do justice to the complexity of all the topics involved, not least as every GC's circumstances are different. But – in keeping with our image of the GC themselves as a bridge – we have designed the Bridge Model above as a simple do-it-yourself guide for GCs wishing to visualise or assess their progress. It is certainly not scientific, but it may help you think about areas on which you should focus.

How it works

Our bridge has 13 sections, one for each of the first 13 sections of this report. There is no equivalent to the fourteenth section of the report, on the future, as that is where the bridge leads.

The first section of the report, 'About you', is at the centre of the bridge, because the entire exercise is about you. The others follow the order they have in the report. On the next page, we have included reminders of the contents of each section. We have also reprinted the section titles in full, as some are inevitably truncated on the bridge graphic.

You can use the model in any way you wish, of course, but we suggest thinking of it as a depiction of the parts of the bridge a GC needs to cross to reach the future as a true strategic business counsel. If a GC is weak in one of these areas, that part of the bridge will be weak too, or even missing.

A GC might succeed in crossing the bridge if there are just one or two weak sections. But if half the bridge is weak or missing, crossing it will be impossible.

And without a strong, self-aware and bridge-building GC in the middle as a keystone, the bridge will collapse.

1. About you

How well do you build bridges and relationships? How well do you work with the people around you? How much of a business person are you? How flexible are you? How advanced is your long-term career plan? How well do you know yourself?

2. How others see you

How good are you at getting feedback and demonstrating your value to others? How credible are you in your organisation? How well have you developed your personal brand?

3. Your role

How important is your role in the organisation? How successful have you been in growing it? How good are you at handling its conflicting demands? What would most increase your contribution to your organisation?

4. Your skills

How good are your soft skills, and your managerial skills? How financially numerate are you? How good are you at project leadership and conflict management? Do you have a skills development plan?

5. Influence

How influential are you in the business, especially at senior levels? How persuasive are you? How hard do you work to develop your organisational relationships and your influencing skills? How well do you network? Are you authentic?

6. Risk

How central is risk management to your job – and how far have you developed it beyond simple compliance issues? Have you got effective crisis management protocols? What is your own appetite for risk?

7. Ethics, culture and reputation

How well are you positioned to lead on ethics and values in your organisation? How strongly do you influence corporate culture? How much are you involved with issues such as sustainability and reputation management?

8. How do you stay informed?

How good is your horizon scanning? How actively do you seek opportunities to learn more about the business? How good are you at avoiding groupthink and biases?

9. The legal department

How well developed and implemented is your strategy for the department? Have you structured the department to align it with the needs of the business? How well have you cultivated a brand for the department within the business?

10. Your team

How good is your team and how good are you at managing it, both in traditional organisational terms and with regard to issues such as diversity, equality and talent engagement? How do you measure its performance? How do you use non-lawyers?

11. Buying legal services

How good are you at selecting, managing and measuring the value of your external providers of legal services? How highly would they rate you as a client? How will you be using external lawyers in five years' time?

12. Innovation and change

How innovative are you? How much do you own change? How good are you at change management, and facilitating change for others?

13. Outside the business

How much do you engage in thought leadership? How active are you in professional bodies? How much do you contribute to the community through activities such as mentoring, trusteeships and directorships, or pro bono work?

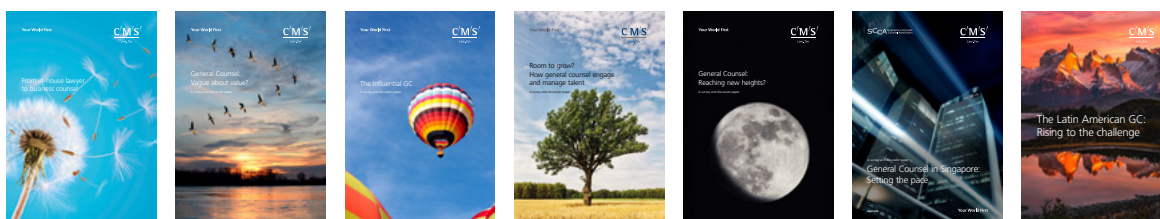


About CMS

CMS lawyers work across sectors and borders in more than 40 countries worldwide – including 28 in Europe – to deliver advice to you wherever you operate. With over 4,800 lawyers globally, we have world-class bench strength. But we see ourselves as more than just legal advisors. We are your business partners. Our focus is on helping you mitigate risk and benefit from innovation, enabling your business or organisation to thrive.

Ten years ago we launched an innovative series of publications for and about general counsel. Through our dialogue with hundreds of GCs over the past decade, we have been able to chart the challenges and opportunities faced by in-house lawyers as they operate in an evolving business environment.

This is the eighth thought leadership report in that series.



About ECLA

The European Company Lawyers Association (ECLA) is the umbrella organisation for 22 company lawyer associations in Europe and represents the common interests of more than 65,000 European company lawyers. During the past 30+ years, ECLA has established itself as the leading representative of European company lawyers' associations.

ECLA was created in 1983. It is an international non-profit association governed by Belgian law. Membership is open to national associations only. While individuals are not members of ECLA directly, each company lawyer who is a member of a national association can partake in the benefits negotiated by ECLA. These include discounts for conferences, legal education, training, free publications, and more.

During the past 30+ years, ECLA has gained recognition as the leading representative of European company lawyers' associations and their individual members. In this unrivalled position, ECLA has established a platform to respond to and exercise influence on the European in-house corporate counsel network, European organisations, and policy-making bodies.

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