



# Turning risk avoidance to competitive advantage – the role of the enlightened GC

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Traditional thinking considers 'compliance' to be about 'avoidance'. But surely the concept has a wider definition? It encompasses corporate governance, the impact of new/changing legislation and the legal and commercial dangers of non-compliance – key areas of risk that businesses need to embrace in an increasingly competitive commercial environment. That's why 'risk' has become an agenda item at Board meetings throughout corporate UK, and increasingly, why in-house Counsel have it as part of their remit.

So what does effective corporate governance look like? Effective corporate governance is the bedrock upon which general counsel can help their organisations prosper. Clients repeatedly tell us that brand reputation and perception is paramount; therefore protecting and enhancing that reputation must be at the heart of an effective GC's role and function. And this plays to a lawyer's strengths.

Whilst corporate governance encompasses more than just statutory compliance and risk recognition, compliance with regulation and risk management are vital elements in the protection of reputation, and are the key planks upon which to build a competitive and sustainable brand. Once a secure platform of effective corporate governance has been built, affordable, acceptable and business advantageous risks can then be taken by a well informed Board.

### What are the risks of not managing risk?

The complexity and pace of modern business life makes corporate governance essential for survival. Recent events such as Deepwater Horizon and the financial crisis have illustrated only too clearly what happens if risk is not properly evaluated or factored into decision making. Nobody wants to be the next Northern Rock.

At its most basic, good risk management means a company stays afloat, its reputation stays intact and its shareholders remain happy and willing to invest. If a company is trusted as a safe pair of hands it is more likely to attract external investment, good staff, positive media coverage and more business from its clients, creating wealth with trust. In current climes, that is in itself advantageous.

Can the benefits of good corporate governance actually be quantified? An ABI study in 2008 tracked 241 companies over four years and in broad terms, those with better corporate governance achieved 18% higher profits. McKinsey also produce evidence that shows shareholders will pay a premium for well run companies.

Well-governed businesses taking affordable risks for commercial advantage are the ones that will survive and thrive. Sticking to just playing it safe won't increase market share. However risk management must be watertight, if corporate governance is only skin deep then the risks of failure may well be heightened by a veneer of security. After all, Enron had a "model" corporate governance system. A good reputation or brand once lost can be lost forever and the impact on the bottom line is underestimated at the corporate peril.

### Can GCs lead corporate governance in the boardroom and throughout the business?

A strong GC helps instil a top-down governance culture, as well as through dealings with the business on a day to day basis. GCs should help the Board adapt corporate governance to their specific corporate structure and work with the risk and compliance teams to ensure it becomes part of the institutional fabric and decision-making process of the business.

Strong leadership is the best way to deliver a culture of compliance. For GCs to contribute to the delivery of effective corporate governance they must be seen as making a strong contribution to the running of the business. The perception should be that the in-house legal team are enablers of the business and not blockers and it is important that GCs portray this mindset themselves. It is too easy for corporate governance to be dismissed as a barrier to short time profit which can make the GC's position challenging but also heightens its importance.

Where GCs can really make a difference is building on that bedrock of well managed risk and driving a culture that seeks to deliver competitive financial advantage from it.

## GCs on the Board?

GCs can and should be hugely influential. They sit at the heart of the business and have wide ranging corporate knowledge. If a GC sits on the Board then he/she can advise and influence from a very strong position. There is a powerful argument for that influence to be allowed to play out at Board level.

The flip side of this is that the GC's role as an independent moral compass could be compromised if they are perceived as being too close to the business to provide meaningful (quasi) independent checks and balances to the Board.

The key thing is for the GC to be influential, whether or not they have the formal Board position. In organisations that are very hierarchical this will only be achieved by a seat on the Board. More nimble organisations enable GCs to influence whatever their status.

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In part this is also in the GC's hands. They can ensure that brand and reputation is at the heart of everything the Board considers, as this often has a legal aspect. For example: intellectual property rights, how the organisation responds to complaints and litigation, ethical trading through appropriate contract provision and requirements on sub-contractors, the approach to bribery and other key risks such as health and safety culture.

Irrespective of whether or not GCs do sit on the Board they can play a key role in providing quality information in structured Board packs which focus the Board on taking affordable risk, by placing a clear focus on strategy as opposed simply to compliance.

## Looking forward

GC's are becoming increasingly influential. There is a strong leadership position for GCs to affect the boardroom approach to managing risk and compliance, one that infuses it with a positive, managed risk appetite that allows their organisations to prosper. The current economic climate provides an opportunity for that to increase further to the sustainable benefit of their organisations. It will be fascinating to track those that can achieve it.