



5 RULES FOR THE BOARD AND GENERAL COUNSEL (4/21)

Sometimes the company legal counsel is sitting in the boardroom as a director. Other times, the board treats counsel like a legal auto mechanic -- only seeking them out when something breaks down. Between these approaches, there are many different shades to the relationship between directors and company counsel... yet almost always, this relationship can be improved, to the benefit of the board, of counsel, and to the company itself.

■ Overall, ties between the board and the company lawyer have grown tighter lately. “When I started, I rarely saw in-house counsel in the boardroom,” recalls Jackie Liu, a partner in the governance practice at Morrison Foerster. Today, “that’s dramatically changed, and a lot of general counsels are seen as part of the executive suite.” But this requires both sides to seek more positive, strategic input, rather than assuming counsel’s contribution consists largely of negative warnings on what the company *shouldn’t* do.

■ Travis Foster, chief legal officer at compliance platform [Work Shield](#), observes “I wish boards would ask more for perspective on how upcoming legal issues affect the budget.” Compliance, operations, regulation and other matters touched on by legal all have financial aspects, but too often the board and company counsel approach these from their own siloed perspectives. Foster says counsel needs to “come to the table and make the board aware that they understand the business,” and what legal insights can do for the bottom line.

■ There are many other areas where counsel can offer insights from the legal side, if the board only asks. For example, Liu find the “intersection of software and privacy issues” has become increasingly crucial to companies. Europe’s GDPR (General Data Protection Regulation) rules are reaching across the world. But such laws carry more than just negative dangers – there are also *positive* opportunities for companies that shape themselves into a leader in the field. The fast-changing rules on foreign ownership are another such prospect, says Liu – “legal departments are good at finding ways to turn regulation into an opportunity.”

■ Since the corporate secretary function is almost always housed in the legal department (and sometimes as the same person), both need to work together to make info that goes the board more useful and digestible. Legal briefings to the board are sometimes second only to financials in being massive and opaque, and counsel should team up with the secretary “as an effective gatekeeper to assure the board isn’t overwhelmed,” says Liu.

■ While there are many ways corporate counsel can work better with the board, one of the best is for both sides to respect their unique roles. “Counsel can help facilitate, but also understands the boundaries,” notes Liu. Counsel is there to give the board legal perspectives, risks, options and insights, all informed by counsel’s business sense. But then, the board makes its own decision.

RALPH WARD’S BOARDROOM INSIDER is published monthly for directors, CEOs, those who work with corporate and nonprofit boards (corporate secretaries, corporate counsel, support staff, and consultants), and those who are board prospects.

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