Introduction

The relationship between boards of directors and their most senior corporate counsel often straddles a precarious line. General counsels, chief legal officers and the like are tasked with identifying and mitigating legal risk for the whole organization. At the same time, many of corporate America's most senior corporate counsel also hold seats or leadership positions on or report directly to those same boards.

Corporate counsel feel pressure — especially from their boards — to offset legal department costs by creating revenue streams. Those with board positions likewise are tethered to fiduciary and other investor obligations. To succeed, they must find the yesses in a haystack full of nos.

The pressures keep coming. In the nearly two decades since passage of the Sarbanes–Oxley Act, boards increasingly look to legal departments for guidance on corporate governance, integrity, security, branding and other matters only tangentially related to the practice of law. Recent additions may include leadership of Diversity, Equity and Inclusion (DEI) initiatives, Environmental, Social and Corporate Governance (ESG) initiatives; recruitment of diversity board candidates; and onboarding new board members.

In Fall 2021, Corporate Counsel partnered with Diligent Corporation to study the relationships between corporate legal departments and their boards of directors, to ascertain and measure those expectations and pressures, and to better understand the evolution of senior corporate counsel's relationships to their boards of directors. To that end, Corporate Counsel's research arm launched an in-depth, 25-question survey of an exclusive market segment: senior in-house counsel, all based in the United States.

Responses were collected by invitation via vetted telephone interviews and online. Those invited to participate were drawn exclusively from Corporate Counsel's proprietary database, an independent research firm and sponsor sources. The survey was open from October 22, 2021, to November 19, 2021, and was completed by 93 respondents.

Respondents' titles include general counsel, chief legal officers, vice presidents of legal and the like. The size of the respondents' legal departments ranged from a single lawyer to 40 or more on staff. The survey proportionately represents legal departments of all sizes.

More than one-third of respondents reported they sit on their organizations' boards of directors. Whenever appropriate, the study also examines the differences and similarities in perspective between those with and without board seats.

The survey explores:

- An overview of the survey respondents, including: title(s) and number of lawyers in their legal departments.

- Respondents' interface with their boards, including: reporting and supervisory lines; frequency and time allotment for presentation/reporting; meetings with executive committee; and member collaboration.

- Individual/departmental responsibilities including: top three areas of oversight; revenue generation expectations; early business strategy involvement; legal issues dealt with in past two years; and involvement/examples of strategic initiatives.

- Social/cultural responsibilities and pressures including: DEI pressure; diversity recruitment to board; ESG leadership; board and personal views of the legal department as the organization's moral compass; and responsibilities to onboard new board members.

- Board priorities including: its desire to lead and develop purposefulness; single most important risk; and ranking its priorities, preparedness, legal team preparedness and global challenges.

Perhaps the level and number of responsibilities senior corporate counsel share will come as little surprise to those in the know. Irrespective of board position or reporting line, 98 percent of respondents reported responsibilities to their boards. This study, however, finds those responsibilities do not necessarily equal time or access to key decisionmakers. Still, legal leaders with board seats seem to enjoy a bit more sway than those without. The currency for influence and value is taking a literal seat at the table and assuming leadership of peripheral, non-legal issues.

Other key findings

- Senior counsel frequently address their boards of directors, with nearly four in five frequently attending and/or reporting to their boards during regular meetings.
- Despite their frequent presentation responsibilities, just 37% hold actual board seats or positions.
- Only two in five have a reporting line to their boards of directors, yet the aforementioned 98% have responsibilities to their boards.
- Despite this, one-fourth of the GCs surveyed meet infrequently (answering seldom or never) with their board or its committees. Fewer than half collaborate externally with board and committee members on a regular basis (answering never, seldom or sometimes).

- During board meetings, few are given adequate time to thoroughly address legal or other matters, with 96 percent given less than 20 minutes of agenda time to present to their boards. Another 9 percent are given less than 5 minutes.
- More than four in five (82%) are involved in the revenue-generating idea process. Almost all (97%) of those have seats on the board are involved; 73 percent of those without board seats also are involved.
- Eighty percent report their boards are committed to leading and developing purposefulness, defined as “an aspirational reason for being that is grounded in humanity and inspires a call to action, i.e., ESG both externally and internally,” into their companies’ corporate cultures. Among them, 43 percent rated their board’s commitment to corporate purposefulness as very high.;
- Most (88%) have obligations related to onboarding new board members.

Finally, the survey canvassed types of strategic initiatives in which legal departments are involved and ways respondents bring value to their boards, garnering myriad perspectives.

Overview of respondents

The in-house legal leaders surveyed for this study were asked to provide their titles. Several selected more than one. The results illustrate the exclusivity of the study group with 83 percent reporting the typically senior-most titles such as global/organizational general counsel (40%); division general counsel (12%) or chief legal officer (31%).

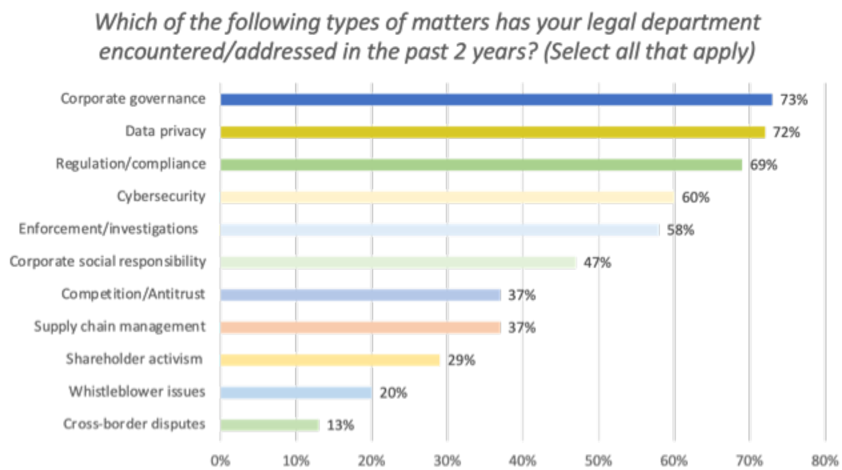
More than one in four likewise serves the board as corporate secretary (28%). Sometimes overlapping those roles, another one-fourth serve as vice president, executive vice president or senior vice president of legal (25%). Four percent are associate or deputy GCs for their organizations, and 6 percent provided “other” titles, such as global privacy counsel, director, corporate counsel, chief of staff, managing director or chief compliance officer.

The number of lawyers employed by the legal departments represented in the study spanned a consistent and broad range of sizes:

Number of lawyers in legal department	Percentage of total respondents
Just me	8%
2 to 5	25%
6 to 10	12%

11 to 15	19%
16-20	15%
21-40	9%
More than 40	13%

Individual/departmental responsibilities



Not surprisingly, corporate governance remains the foremost up-at-night matter that corporate counsel face. When asked the legal matters their legal departments have encountered or addressed in the past two years, 73 percent named corporate governance. Perhaps more surprising was the abundance of respondents who, since 2019, likewise have encountered matters involving data privacy (72%), regulatory/compliance (72%), cybersecurity (60%) and enforcement/investigations (58%). Almost half (47%) said they have dealt with corporate social responsibility matters.

Still another third of the legal leaders surveyed said they had encountered supply-chain management issues (37%) and competition/antitrust matters (37%). Nearly one-third (29%) faced shareholder activism matters. One-fifth (20%) confronted whistleblower issues and 13 percent took on cross-border disputes. Other legal matters reported include intellectual property/licensing; Environmental, Social, and Governance (ESG), government affairs; health and safety; mergers and acquisitions; labor/employment; and issues related to corporate restructuring.

Just under half (48%) reported their legal departments are involved in board-directed or board-prioritized strategic initiatives.

Top responsibilities

Respondents were asked their top responsibilities to their boards and permitted to select as many as three from a list of eight options. Only 2% answered “none,” indicating that 98% of those surveyed take some level of direction from their boards.

Two-thirds (67%) of the survey-takers cited “risk identification and assessment.” More than half selected corporate compliance and security. Below are the results.

Risk identification and assessment	67%
Corporate compliance and security	53%
Record retention and management	44%
Crisis management	42%
Outside counsel management	33%
Costs/controlling legal spending	32%
Other	23%
None	2%

Governance was not among the selections, although respondents could — and many did — add it among their three under “other.” Additional write-ins include: contracts and negotiations, strategic goals/direction, M&A and commercial deals, day-to-day legal matters, general/task management, independent advice, litigation/crisis management, performance assessment, product development, board recruitment, and training.

Revenue generators/business strategists

The novelty of legal departments seeking to add value to their boards by creating new revenue streams is gone; in 2021 that function is part of the job description. As mentioned earlier in the key findings section of this report, more than four in five (82%) of the senior legal counsel surveyed are involved in the revenue-generating idea process. Among them, a whopping 97% of those with board seats and 73% of those without are involved.

It likewise appears the days when senior counsel are brought in too late to help shape strategy decisions are waning. Most (61%) reported they are almost always or often brought in early to make business strategy decisions. Another third (32%) are sometimes brought in early. Only 7 percent reported they are seldom or never asked to weigh in early in the process.

All respondents

24%	Almost always
37%	Often
32%	Sometimes
5%	Seldom
2%	Never

The numbers jump among those WITH a seat on the board, with only 3 percent reporting "seldom" and no "never" responses.

35%	Almost always
29%	Often
32%	Sometimes
3%	Seldom
0%	Never

Among those WITHOUT a seat on the board, those brought in "almost always" drops significantly.

17%	Almost always
41%	Often
32%	Sometimes
7%	Seldom
3%	Never

Interface with board

Three-fifths (59%) of all respondents do not have a reporting line to their boards. Allowing for multiple lines, two-thirds (66%) of those who do have such lines report directly to their organizations' chief executive officers.

I report directly to the Chief Executive Officer	66%
I report directly to the Chief Financial Officer	26%
I report to the General Counsel	18%

I report to the Global General Counsel	18%
Other (Chair of the Board; Chief Compliance Officer)	5%

Board presentations

Senior counsel frequently address their boards of directors, with nearly 4 in 5 (79%) frequently attending and/or reporting to their boards during regular meetings. As mentioned earlier, 41% of the senior counsel surveyed have seats on their boards. Among them, nearly all said they address their boards “almost always” or “often.” Only 3 percent “sometimes” present or report to their boards.

Frequency of board presentation: Respondents **WITH** a seat on the board	
Almost always	62%
Often	35%
Sometimes	3%

Frequency of board presentation: Respondents **WITHOUT** a seat on the board	
Almost always	47%
Often	20%
Sometimes	15%
Never	10%
Seldom	7%

Time/Access

Regardless of board status, time remains a premium. Excluding the 6% of respondents who said they never present during board of director meetings, only a handful are given at least 20 minutes to report. One in 10 is typically given less than 5 minutes to convey a tremendous amount of information.

More than 20 minutes	4%

15 to 20 minutes	22%
10 to 15 minutes	36%
5 to 10 minutes	23%
5 minutes or less*	9%
Never	6%

*Among those given 5 or fewer minutes, half report to their boards almost "always" and nearly half report "often."

Access

Access likewise remains a precious commodity. Asked "How frequently do you meet in executive sessions with the board or any of its committees?", half answered "often or almost always," while one in four answered "seldom" or "never."

Almost always	13%
Often	41%
Sometimes	21%
Seldom	8%
Never	17%

And when asked "Outside of executive sessions with the Board or Board committees, how frequently do you collaborate externally with Board members?" fewer than half reported such collaborations on a regular basis.

Almost always	10%
Often	39%
Sometimes	35%
Seldom	10%
Never	6%

Social/cultural responsibilities versus pressures

How much of a GCs' redefined roles comes from actual board pressure and how much comes from their inherent desire to demonstrate value is the key question for the social and cultural snapshot.

When asked rate on a 5-point scale (5 being very pressured and 1 being not pressured at all/not discussed) "how much pressure do you feel from your board to lead the organization's

Diversity, Equity and Inclusion (DEI) initiatives?", more than three-fourths indicated moderate to low pressure. Respondents' answers averaged only 2.6. That said, this question differed from subsequent rankings because it focused on pressure the boards put upon senior counsel as opposed to questions that measured leaders' internal stressors.

Rating	Responses
5 (very pressured)	6
4	13
3	33
2	17
1 (not pressured/discussed at all)	21

Illustrating the above point, almost three-fourths (72%) reported they or their legal departments are active in recruiting diverse board candidates.

Once diverse and other candidates are sworn in, corporate counsel also carry heavy responsibilities to help onboard them. Eighty-eight percent of corporate counsel report their departments are tasked with imparting or communicating at least some of the following board responsibilities to incoming directors:

Companywide initiatives led by the legal department	67%
Fiduciary obligations	60%
Company history, culture, etc.	55%
Company strategy and risk	39%
Other(s)*	9%

*Other answers include: Cyber, enterprise risk, role clarification, site visits and policies surrounding technology use

The moral compass question

Two in three (67%) said their boards look to Legal as the company's moral compass. Among those with board seats, 74% indicated that was their board's view, compared to 61% of those without a board seat. But when asked whether they personally believed that was a role for the legal department, 59% said "yes" and 41% said "no." The exact same results were recorded among those with and those without board seats. The consistency in responses may indicate that individual beliefs surrounding morality and responsibility are deeply hardwired.

Board priorities

Senior counsel understand that proactively tackling matters before they become legal risks is almost impossible to quantify; it is an invisible value they bring that directors may not always recognize. Therefore, one way GCs demonstrate value is by providing leadership in areas that are important to their boards.

As an example, 79% report their boards are committed or highly committed to leading and developing purposefulness -- defined as “an aspirational reason for being that is grounded in humanity and inspires a call to action, i.e., ESG both externally and internally” -- into their companies’ corporate cultures. On a 5-point scale where 5 signifies “highly committed” and 1 indicates “not committed or discussed,” responses averaged 3.24.

Seemingly in answer to the overarching goal of purposefulness, three in five (59%) reported they **lead** their board in Environmental, Social and Corporate Governance (ESG) initiatives. Given the senior perspectives represented, one might reasonably infer that asserting leadership stems from their deep understanding of their boards’ priorities.

Risk

Senior counsel also understand their boards’ conception of risk. Asked to select between four risks which was most important to their boards, half (51%) chose corporate risk affecting operations and company finances above all else.

Corporate Risk: effect on operations and financial performance	51%
Reputational Risk: effect on the company’s branding and reputation	30%
Informational Risk: protecting sensitive and personal data	12%
Behavioral Risk: effect on the corporation of employee behavior	8%

Ranking board priorities

Asked to rate seven board priorities on a rating scale, where 5 indicates “top priority” and 1 “not a priority,” governance/risk/compliance not surprisingly topped the list with an average of 3.9. Meeting investor expectations and executive compensation also rated highly, with 27% and 24% respectively rating it 5, or “top priority.”

Topic	Average	% who answered 5=Top Priority	% who answered 1= not prepared at all
Executive compensation	3.5	24%	3%

Environmental, Social, Corporate Governance (ESG)	3.5	16%	4%
Meeting evolving investor expectation	3.5	27%	12%
Board composition	3.5	22%	8%
Board succession planning	3.4	18%	1%
Security of board communication	3.2	14%	12%
Governance, risk and compliance	3.9	27%	1%

Board preparedness ranked

Asked to rate their boards' preparedness to provide effective oversight all (i.e., information, best processes and reporting protocols) of those same priorities on a scale where 5 refers to "fully prepared" and 1 indicates "not prepared at all," governance/risk/compliance again topped the list, repeating its average 3.9. Board communication security (average 3.4) may be more vulnerable, with only 12% reporting their boards are "fully prepared" and 4% saying the boards are "not prepared at all."

Topic	**Average**	**% who answered 5=fully prepared**	**% who answered 1= not prepared at all**
Executive compensation	3.6	22%	4%
Environmental, Social, Corporate Governance (ESG)	3.4	15%	6%
Meeting evolving investor expectation	3.4	16%	6%
Board composition	3.5	18%	4%
Board succession planning	3.5	20%	6%
Security of board communication	3.4	12%	4%
Governance, risk and compliance	3.9	24%	0%

Ranking legal team priorities

Asked to rate five legal department goals on a 5-point scale where 5 indicates "top priority," "ensuring proper and thorough coalescence related to critical risks and compliance issues for internal board visibility" ranked highest with an average 3.8 and 27% identifying it as a top priority.

Topic	Average	% answered 5 = top priority	% answered 1 = not a priority
Improving efficiency in our Board document management and communications	3.7	23%	2%
Security of our board communications during online Board collaborations and meetings	3.4	20%	1%
Preparedness/response for unanticipated activist investors	3.1	12%	12%
Eliminating inadvertent financial risk related to improper reporting on key disclosures	3.7	26%	3%
Ensuring proper and thorough coalescence related to critical risks and compliance issues for internal Board visibility	3.8	27%	1%

Ranking global challenges

Asked to rate four challenges to global growth – with 5 indicating "top challenge" and 1 "not a challenge" — the most common answer was "evolving risks and changing regulations in the jurisdictions in which my company has legal entities." That response garnered an average ranking of 3.8, with 28% identifying it as the top challenge.

Topic	Average	% answered 5 = top challenge	% answered 1 = not a challenge
Evolving risks and changing regulations in the jurisdictions in which my company has legal entities	3.8	28%	O%
International transfer pricing compliance	2.8	13%	20%
Establishment or maintenance of a single, accessible centralized corporate record for entity governance	3.8	13%	9%
Organizing, managing and updating myriad legal entity documents	3.5	18%	4%

Conclusion

Taken together, the survey responses illustrate the never-ending juggling act required of corporate legal departments and their leadership. Corporate counsel must respond to the needs and carry out the priorities of their corporations' boards of directors as well as, in some cases, shareholders and other stakeholders. At the same time, they must maintain fidelity to their responsibilities as lawyers. Understanding and quantifying the pressures they face is a key step in ensuring top in-house counsel operate ethically, legally and efficiently.