Entering a New Era of Corporate Governance: **How GCs Can Level-Up in Leadership**

The transition to governance 4.0

The increasing frequency of global challenges is placing growing pressure on board and leadership teams. We're entering the era of governance 4.0. So what exactly does that mean?

Betsy Atkins, a serial entrepreneur in the energy space and venture capitalist, recently published an introduction to the topic in Forbes.

> "The boards' role has shifted from governance 1.0, which was a remote-distance oversight board; to governance 2.0, which brought compliance and reform to the boardroom post Enron; to governance 3.0, which is marked by the shift from shareholder to stakeholder capitalism and ESG-centric mindset; to present day governance 4.0 where the company's long-term competitiveness is completely interwoven with tech enabling every business function."
>
> **Betsy Atkins**
> **Board Member at Wynn Resorts**

Corporate governance becomes a priority with at-a-distant observation being the status quo

Governance 1.0

Compliance and regulations take on a stronger role in guiding strategic board agendas — boards recognize a need to hold themselves to higher accountability

Governance 2.0

The transition from shareholder to stakeholder capitalism begins — diversity, equity and inclusion accelerate in response to millennial and gen Z values

Governance 3.0

Companies recognize the importance of governance as a future-proofing strategy — ESG, data privacy, and technology acceleration are focal points

Governance 4.0

Organizations such as the World Economic Forum (WEF) and Deloitte are also publishing insights devoted to the transition to governance 4.0 frameworks.

According to WEF, the global trust crisis has pushed governance to a point-of-no-return moment due to a confluence of events that have upended the geopolitical order.

“Today, many people have lost faith in their leaders,” writes Klaus Schwab, WEF Founder and Executive Chairman. “Faced with mounting risks and our collective failure to address them, we have started looking for culprits.”

There is no choice but for organizations to adapt.

> “The truth is more complicated. At the heart of our failure to foresee and manage global risks – not only climate change and deepening social divisions but also the reemergence of infectious diseases, debt crises and inadequate technology regulation – lies an unresolved problem of global governance.”
>
> **Klaus Schwab**
> **WEF Founder and Executive Chairman**

What it takes for companies to evolve

A company's integrity and its business reputation are critical in today's global business environment, and the general counsel (GC) is in an ideal position to assure that the board recognizes this and acts accordingly. Playing a proactive role to encourage a culture of ethical behavior and compliance is of paramount importance.

The late Ben Heineman, a former General Counsel of GE, once stated, "The general counsel should ask not just whether something is legal, but whether it is right." The advice is particularly applicable to today's environment. The GC can no longer effectively serve the board by simply determining whether a proposed board decision will comply with current law.

The Swiss Board Institute and Deloitte recently published a set of guiding principles to tackle modern challenges outlined by WEF. Key points include:

- **Establishing a forward-looking board of directors that can evaluate and audit its work regularly.** The idea is to establish a high standard of performance with the discipline to take constructive steps forward.
- **Ensuring pathways for new leadership roles and responsibilities.** The most successful organizations will be able to accommodate change as they adapt to what the future brings. A company's board of directors needs to open its doors to non-traditional perspectives and skillsets.
- **Incorporating the "three Cs" into a board of directors' key strategy.** There's a need to prioritize competencies, cooperation and forward-looking conduct as quickly as possible. That means making swift course corrections, if necessary.
- **Enabling mental preparedness during times of crisis.** Nobody could have predicted the news headlines that are defining our modern world. Boards must remain a force of stability during crisis situations.

> "The general counsel should ask not just whether something is legal, but whether it is right."
>
> **Ben Heineman**
> **Former General Counsel of GE**

> "The general counsel's role is the same in some respects as every other senior leader — to be a role model."
>
> **Hilary Krane**
> **Former GC of Nike**

How GCs can embrace their roles as leaders

Strategic planning is a rising focus area for GCs. It is incumbent upon the GC to bring his or her knowledge of relevant regulatory and legal frameworks to decisions and creatively counsel the board on how these guidelines might be employed to maximize a company's competitive advantage.

By delivering effective insights, the GC can participate in the discussion on a more active level and lead the business to better decisions. Technology can help GCs meet evolving expectations and be the strategic partners their organizations need.

> "When we look back 5 years from now, governance 4.0, the era of future-proofing, will seem the obvious thing we should have embraced sooner!"
>
> **Betsy Atkins**
> **Board Member at Wynn Resorts**

When Gartner surveyed 97 GCs from around the world in 2021, respondents reported that:

Effective GCs spend

48% more time on strategy

43% more time offering business guidance

Effective GCs are

51% better at executing corporate initiatives

50% better at identifying emerging risks

Understanding business partner challenges improves GC performance by

39%

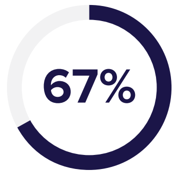
The GC's boardroom influence: survey findings

In Fall 2021, Corporate Counsel partnered with Diligent Corporation to study the relationships between corporate legal departments and their boards of directors to better understand the evolution of senior corporate counsel's relationships to their boards of directors.

Key trends from the study included:

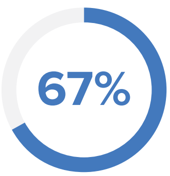
Corporate boards are committed to doing good.

80% report working with corporate boards that strive towards 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.



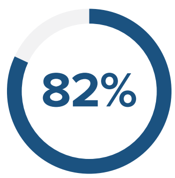
Legal shields companies from risk.

67% say that "risk identification and assessment" is a top responsibility. Other responsibilities include corporate compliance and security (53%), record retention and management (44%), crisis management (42%) and outside counsel management (33%).



Legal protects ethics.

67% say that their boards look up to legal as a company's moral compass.



Legal supports pathways to revenue.

82% say that they are involved in the revenue-generating idea process.

It's clear that corporate boards are committed to doing good and that legal is key to shepherding necessary change. But senior legal counsel may not be fully empowered in their leadership.

Even though 98% of surveyed GCs have responsibilities to their boards, only 2 in 5 have a clear reporting line available. Despite their frequent presentation responsibilities, just 37% hold actual board seats or positions. one-fourth of the GCs surveyed meet infrequently (answering seldom or never) with their board or its committees. Our survey found that GCs have extremely limited time with boards.

4%	**22%**	**36%**	**23%**	**9%**	**6%**
More than 20 minutes	15 to 20 minutes	10 to 15 minutes	5 to 10 minutes	5 minutes or less*	Never

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

GCs can maximize their strategic influence by making the most out of limited time. To be most effective, GCs need technology that can help improve board and executive visibility into the issues facing their organizations, so that time is spent not on absorbing the data, but on actioning the intelligence.

A path of action for GCs

Even though GCs almost always attend board meetings, they have little time to report on everything they oversee. Every minute counts. By delivering effective insights rather than data, the GC can participate in the discussion on a more active level and help boards reach better decisions.

Here are some concrete ways for GCs to reach peak performance, communicate more effectively, and gain recognition as board leaders.

1 Take on a leadership role in M&A strategy and planning

GCs must take on a proactive and crucial role in M&A activity. At a minimum, the first step is to create a centralized, corporate record that offers a single source of truth for the organization.

With a centralized corporate record, boards can standardize their workflows and reduce overhead and cycle times. The following benefits become attainable as a result:

- Having all current entity information in a single location greatly improves visibility across an organization, highlighting strengths and weaknesses and bringing gaps and opportunities to the forefront.
- A centralized corporate record can facilitate understanding of legal requirements to operate in a specific jurisdiction. If the organization currently operates an entity there, the information needed to operate, no matter how complex, is readily available.
- Automating administrative tasks can improve data accuracy and reduce repetitive efforts, As a result, key strategic personnel can stay laser focused on moving more strategic initiatives forward.

Organizations with democratized visibility and a single source of truth are better equipped to make informed, strategic and quick decisions, whether they're supporting organic growth, M&A or corporate simplification.

2 Build infrastructure to advance environmental, social and governance (ESG) objectives

Evolving standards and reporting frameworks makes ESG a target constantly in motion.

Diligent has identified 6 operational pillars for an effective ESG program.

1 LEADERSHIP

2 GOALS

3 FRAMEWORKS

4 DATA

5 TECHNOLOGY

6 REPORTING

With these pillars in place, companies can establish an ESG program that defends against risks and helps identify opportunities. This approach is critical to future-proofing an organization and strengthening organizational resilience.

Ultimately, it's up to the GC to balance the following dimensions of a successful ESG program:

- **Compliance.** With the regulatory net around ESG continuing to tighten, compliance with emerging ESG regulations is essential. A failure to grasp basic ESG protocols could lead to severe penalties in the future.
- **Ethical.** The pressure to act on core ESG principles will come from all angles: customers, investors, regulators, communities, connected third parties and employees.
- **Risk focused.** The benefit to establishing an ESG program far outweighs the risk of not doing so. A well-structured approach to managing ESG issues is one way of minimizing risk across the business.
- **Value opportunity.** Done right, an ESG program can provide value for organizations at every level of the business. There's a need to align ESG objectives with core strategic priorities.
- **Value creation.** The ultimate goal is for ESG to be integrated with a company's core strategy. At this stage, a clear line of sight exists between everyday operations, business success and profitability.

ESG requires clear guidance and leadership from GCs. With the right technical and operational systems in place, GCs can effectively connect dots between boards, executives, managers and operational teams.

3 Influence through intelligence rather than data

Company performance is bound to broader market conditions, stakeholder expectations and team performance. It's up to GCs to deliver intelligence that accounts for these variables. An understanding of company performance in context will enable board members to ask the right questions.

The right intelligence equips boards to respond faster during times of crisis. During times of trouble, boards typically only have a short window of time to respond. Timely information also helps boards to get ahead of market developments, which enables boards to stay ahead of the competition.

Modern governance is the process of empowering stakeholders with the right information at the right time to enable them to ask better questions, which leads them to better decision-making. As discussion leaders, GCs will benefit from analytics that synthesize multiple sources of data. Technology is the foundation of this capability.

About Diligent Corporation

Diligent is the leading governance, risk and compliance (GRC) SaaS provider, serving more than one million users from over 25,000 organizations around the globe. Our modern GRC platform ensures boards, executives and other leaders have a holistic, integrated view of audit, risk, information security, ethics and compliance across the organization. Diligent brings technology, insights and confidence to leaders so they can build more effective, equitable and successful organizations.

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