
“Being a Source of Truth for the Organization”: The Role of Chief Legal Officers in an Era of Disruption



According to recent research from Russell Reynolds Associates and The Conference Board, more than 70 percent of companies who have created a senior-level crisis response team in the wake of the pandemic have appointed legal staff to that team, and many have appointed their Chief Legal Officer to run it. This shouldn't be surprising: The Coronavirus pandemic has created a myriad of legal challenges for corporations, and Chief Legal Officers have the skills and experiences necessary to take on leadership roles in a period of crisis.

Our colleagues in Russell Reynolds' Legal, Regulatory, and Compliance Practice recently spoke with nearly 100 corporate chief legal officers and general counsels about the challenges facing businesses today and how corporate legal teams are playing a role in their response. They shared with us insights about the uniqueness of today's challenge and lessons learned from the difficulties they've navigated and that others will likely face. Here is what they said:



The New Novel

LEGAL OFFICERS HAVE BEEN FACING A LOT OF CHALLENGES

Including some they have never experienced before. These matters include employee safety, supply chain disruption and the evolving state of executive orders (state and federal). One GC remarked, "Our teams are flying at a higher altitude, dealing with big issues that would not typically come to us." As a result, GCs are personally handling issues of first impression on the one hand, while addressing extremely weighty challenges to the future of the enterprise. They are adapting to new responsibilities while finding solutions. Faced with new regulatory developments each day, one GC summarized the question at the heart of their work: "What does proper stewardship look like for the company, our employees, and the customers?" Others noted anticipating a wave of litigation post-crisis from employees, vendors, and insurers. "When this is over," said one GC, "we will spend significant time reflecting on how we handled privacy issues and the status of essential workers."

THE UNPRECEDENTED ISSUES GCS ARE ADDRESSING HIGHLIGHT THE EVOLVING NATURE OF THEIR ROLE.

For many GCs, the crisis seems to have solidified their seat at the table, with the crisis acting as an opportunity for them to "step up." While this depends on the tenure of leadership team within the organization, there were multiple references to the "quad" of chief executive officer, chief financial officer, chief human resources officer and GC. One individual noted speaking with the CEO more frequently. Many GCs are involved in HR conversations, including discussion regarding people, safety, and planning for the future. One individual highlighted that these conversations have "quickly shifted from changes in relation to the pandemic to permanent changes."



New Challenges Require Specific Skills

LEGAL OFFICERS MUST LOOK AROUND, IDENTIFY, AND HARNESS INNOVATIVE PRACTICES TO PREPARE FOR WHAT COMES NEXT.

While exactly what the “new normal” will look like remains unknown, several positive scenarios were raised. There was a conviction that there would not be a return to the old normal. One GC aptly said, “It’s not just about returning to the old way of doing things; it’s about defining what we want the new normal to look like by asking, ‘What environment do we want our people to come back to?’” A GC noted that for the foreseeable future employee travel will be limited as will major marketing events, like conferences or expos; this points to a need for new ways of engaging with networks and customers. The benefit will be found in cost savings and reinvesting marketing and travel funds into new, primarily digital channels to enhance customer experience. One GC emphasized that the critical need is to begin adjusting business models to the shifts happening in the overall market, for example the major transition of healthcare to telehealth.

COMMUNICATION SKILLS ARE CRITICAL, ESPECIALLY WHEN INTERACTING WITH SHAREHOLDERS.

Most GCs we spoke with reported having been contacted by institutional investors specifically about the pandemic. One GC warned that the unprecedented nature of the pandemic’s impact could make companies vulnerable to violating the Regulation Fair Disclosure (Reg FD) rule. Tasked with “being a source of truth for the organization,” GCs and their teams are having to gather, verify, and disseminate information amongst all the misinformation out there. As part of adapting to new and expanding responsibilities, GCs are having to balance transparency with disclosure liabilities. To adequately field incoming questions, one company issued a press release with key talking points, which enabled the team to have discussions with investors without violating Reg FD.

BEING NIMBLE DURING PERIODS OF UNCERTAINTY IS AN ESSENTIAL SKILL.

One GC highlighted how their company established emergency child care centers for essential employees through a partnership with Marriott and Care.com. Another mentioned contracting with a nursing service to help with testing. Some GCs highlighted bringing in consultants to add expertise that is not currently present within the company, such as a de facto Chief Medical Officer or Epidemiologist for non-life sciences companies. The GCs agreed that the question of returning employees to work once federal and state orders are lifted presents significant challenges like ensuring employee safety and privacy in face of increased testing requirements and providing high-quality customer service. To begin considering a return, key milestones would have to be reached, including lifting of federal, state, and municipal regulations, antibody and infection testing, contact tracing, closer proximity to a viable vaccine, and establishing effective social distancing rules.



Critical Areas of Focus

BOARD MANAGEMENT IS A CHALLENGE IN THESE EXTRAORDINARY TIMES.

GCs reported different cadences of communication with CEOs and senior management, with most reporting weekly communication, and even more frequent when the crisis first began unfolding. One GC noted that the board had recently shown a greater degree of empathy and kindness: “The board has shown a human element and a concern for the company as a community; quarterly earnings is not the main focus right now.” In addition, a GC noted that director, as well as employee, onboarding during the crisis presents new challenges; however, some directors have found that they are being exposed to material issues more quickly and in greater depth,

particularly related to risk management. Multiple GCs have seen a change in their board's pre-reading materials and meeting agendas. Board members are being asked to read more upfront to allow for more robust discussion and decision-making in a compressed meeting schedule; many directors have found the shorter meetings to be more productive and effective – if held by video conference; telephonic meetings have been reported to be far less effective than either in person or video meetings.

INVESTOR CONVERSATIONS HAVE INCREASED SIGNIFICANTLY.

GCs reported that communication with the board and investors has increased significantly. They noted, however, that investor conversations are less “one size fits all” and have taken a customized approach based on the business. While the focus of these discussions continues to center primarily around handling the crisis in the present, there is now an additional focus on life after the crisis. Topics of discussion with investors are future-oriented with a strategic eye on “where organizations want to be post-COVID.” In addition, one individual noted that there has been an uptick in questions around ESG, especially environmental and governance, from investors.

IT IS CRITICAL TO MAKE EMPATHY A PRIORITY.

While daunting for leadership teams, re-imagining the future poses a new challenge that enable leaders to define how they want their organization to look and act in the future. GCs agreed that there are silver linings amidst the current challenges, one being how colleagues are rallying around one another and showing empathy even in the virtual workplace. Zoom and other virtual meeting technologies have brought team members into each other's homes where they see glimpses of deeper connections being formed. The informality has created more visibility and is especially a “great way for employees to develop new forms of trust and to see leaders as people.”



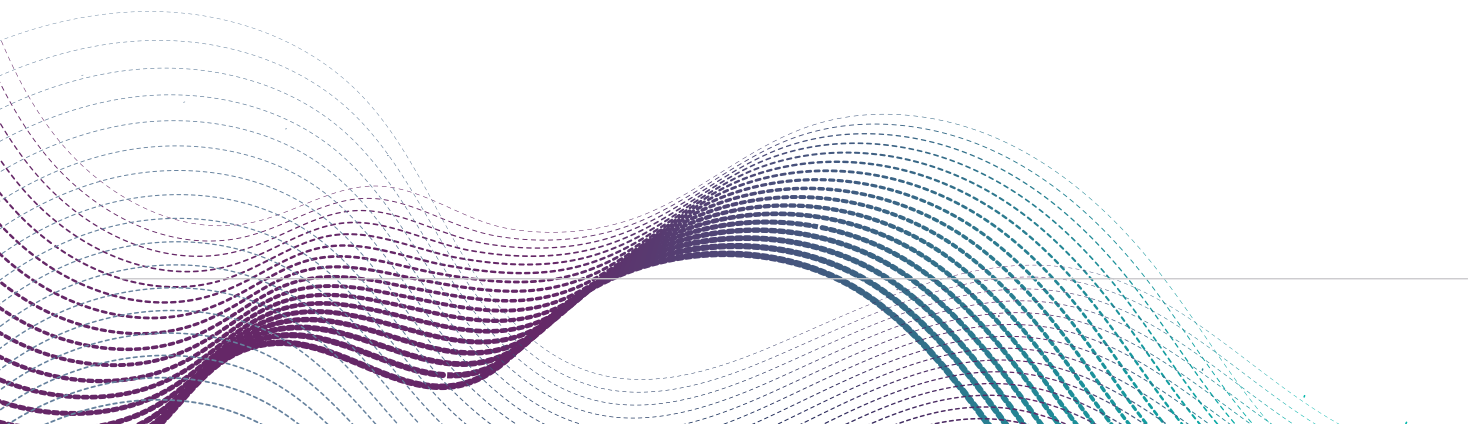
Looking to the Future

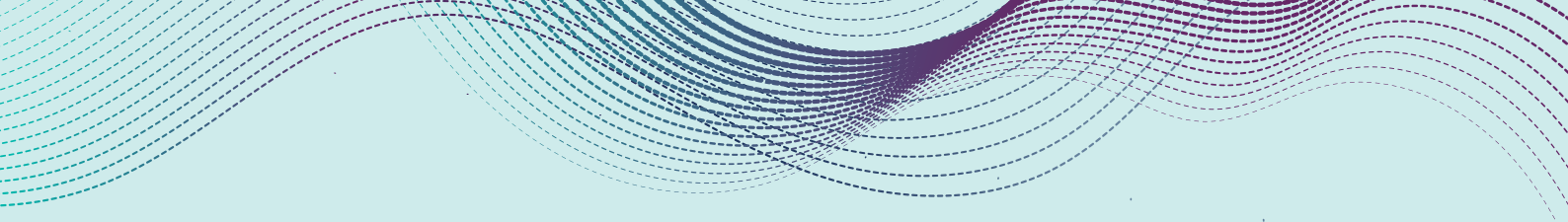
GCS NEED TO HAVE A RE-ENTRY MINDSET.

With re-entry on the minds of most GCs, planning has been underway with organizations putting together dedicated task forces. Some are already beginning to pilot programs in a few offices. Given that many organizations have multiple offices, there is an added layer of complexity that comes with operating in silos and not having a blanket guideline for re-entry. Compacted with the legal risks and not wanting to force employees back to the office, many seem to have adopted the stance of “being a fast follower rather than a guinea pig.”

IT IS IMPORTANT TO PLAN FOR BOTH THE NEAR AND LONG TERM.

Many executive teams had robust succession plans in place before COVID-19 hit; however, the pandemic has caused a different focus. Succession plans typically cover a 1-2 year time horizon, and many companies have this type of plan in place. The new scenario for planning around succession is a much more immediate, “hit by a bus,” emergency plan preempted by COVID-19. Some GCs noted that the criteria for what matters in the successor may have changed. If the depth of viable internal candidates is limited, companies will need to look to candidates outside of the organization, which requires thorough benchmarking of the external talent market. One noted that an emergency succession plan does not just support the board and senior leadership during uncertainty; having a robust plan also enables the resilience, strength, and drive of the broader organization.





Shortly after we spoke with these senior legal officers about their experiences dealing with a global pandemic and tremendous economic disruption, a new challenge emerged: widespread societal unrest in response to racial injustice. The protests – which started in the United States – quickly spread around the world, and corporate leaders have moved quickly to commit their organizations to promoting change and increasing inclusivity. Most organizations sit along a spectrum from communicating solidarity to taking action for meaningful change, and leaders are grappling with how to advance along this spectrum.

This latest challenge will once again create an opportunity for GCs to step up and lead. Their skills, built up during careers spent navigating ambiguity, working across enterprises, interfacing with external stakeholders, driving adherence to core principles of business conduct and negotiating resolutions to meet multiple objectives, are well-suited for solving today's challenges.

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