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# The General Counsel in 2011

## A rapidly expanding role

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The list of competencies required of today's Chief Legal Officer is long and getting longer. The expectations – of boards, CEOs, and regulators – are making the role more complex than ever. Here's what that ever more demanding role looks like among the Fortune 500 today.

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## A rapidly expanding role

In July of 2010, the Financial Accounting Standards Board (FASB) floated a proposal that would force corporations to disclose what they potentially could get sued for, how much each kind of suit could cost, and the amount of money they have set aside for each type of case. Imagine the task a General Counsel would face in trying to comply with the rule while not simply providing tort lawyers with a blueprint for litigation against the company. Whether this rule is ultimately adopted or not, it typifies the world of increasing regulation, disclosure, and transparency that corporations and their General Counsels now confront. This environment has been intensifying over the past decade, with increased shareholder activism and pressures for improved corporate governance, and it has taken on even more urgency following the global financial crisis of 2008-2009.

At the same time, CEOs have come to expect more than ever from their C-suite: wise counsel, effective management of functions, strategic thinking, and a global perspective. Top leaders must know their specialties, yet also act as generalists who can make significant business contributions to the company. From Head of Human Resources to Chief Financial Officer to Chief Information Officer to General Counsel, top leaders have moved closer to the center of the business, and the bar for what constitutes good performance has been raised. For the General Counsel, who must have a strong working relationship with the CEO but whose client is ultimately the company, these new expectations require a delicate balancing act as well as a wide range of leadership abilities.

What does today's General Counsel look like as a result of these developments, and what are CEOs and heads of HR looking for in a top legal officer? Based on an analysis of the incumbent General Counsels at the Fortune 500 and our recent work with clients seeking top legal officers around the world, we found the following:

### An increased emphasis on breadth of experience – up to a point

Historically, most companies have favored corporate rather than litigation backgrounds for their General Counsels. That appears to remain true today. Among the Fortune 500, in 5 of the 6 industries we examined – consumer, energy, financial services, industrial, and technology – at least 60% of General Counsels have corporate backgrounds. In consumer, energy, and financial services, the figure is closer to 70%. The only striking departure from this observation is in healthcare, where

a little less than 44% of General Counsels have corporate backgrounds, while nearly half come from the world of litigation (*fig 1*).

Despite this apparent tilt in favor of corporate backgrounds, we find that more and more clients are looking for a breadth of legal experience – corporate law, litigation, tax law, intellectual property, and other areas. Among those legal disciplines, regulatory experience and litigation – especially class-action litigation and investigations – are the additional areas a number of companies would most like to emphasize.

However, while there is a desire for breadth of experience, there is often a need for experience within a company's industry. Only in the consumer sector is there a significant number of General Counsels – roughly 25% – who come from another industry. For technology the figure is about 14%. Not surprisingly, the figures are even lower in industries that are highly regulated – for healthcare a little less than 13% come from an outside industry, and about 10 percent in energy and financial services (*fig 2*).

To a great extent, whether a General Counsel is recruited from another industry greatly depends on the CEO's view of how important it is to know the company's industry. For example, in a recent search we conducted in the retail industry, the CEO felt that industry knowledge was critical. This is often true as well in the financial services sector, given the uniqueness of the regulatory environment. In contrast, the CEO of an industrial distribution company ultimately selected its General Counsel from a consumer-facing hospitality company, looking beyond her lack of industry knowledge to her legal skills and personal chemistry with the management team.

## A high degree of skill in managing the growing legal function

Overseeing the large and complex legal function in a Fortune 500 company has always required a high degree of skill. However, we have increasingly seen companies keeping their more important legal work in house, which has led to larger legal departments and more challenges in managing them effectively.

General Counsels are also being called upon to better manage outside legal costs, develop innovative billing arrangements, and know when to turn to outside counsel for advice and when to stay inside. In fact, we have seen several instances in which the tendency of an incumbent to blindly turn to outside counsel, instead of having a personal point of view and a hands-on strategy, has undermined the CEO's confidence in the General Counsel.

Another key skill lies in managing talent, especially in succession planning. The task of grooming – or identifying – a potential successor is an important but often neglected duty of any leader. In our analysis, we found that in every industry except the consumer sector fewer than half of General Counsels were promoted from within their companies. (In consumer, the figure is 60%.) Nevertheless, we encounter more clients who are focusing on finding an internal candidate who might succeed the current General Counsel. They want the continuity, the thorough knowledge of the business, and the hedge against the sudden departure of an incumbent that such candidates provide. Further, a highly visible succession process, including carefully planned development experiences, that reaches far down in the legal function helps the company retain top talent because that talent sees a clear path upward in the organization. If no suitable successor can be found or an heir-apparent departs, the company or senior management must be able to assess and attract external talent.

## An international outlook

In global corporations, the General Counsel must also manage a geographically dispersed legal function as well as a network of relationships with international law firms. This requires skill not only in managing the legal complexities of international operations, tax laws, and the like, but also an international outlook in the broadest sense, including cultural sensitivity. This was of overriding concern in a recent assignment we conducted for a consumer financial services company, which derives the bulk of its revenues from outside the US. The candidate we placed in the role had managed global businesses and law departments and most recently had held a significant management role throughout Asia.

## Ability to navigate government

In an environment of increasing regulation in many industries – most notably financial services, healthcare, and energy – the ability to navigate Washington and work with state regulatory agencies is in high demand. The government-savvy Chief Legal Officer knows how to interact with policy makers, deal adroitly with regulators, and translate government policy into the business implications for the company.

While hands-on experience with Washington is desirable and government experience is a plus, few General Counsels come to their corporate roles with exclusively government experience. A combination of public and private sector experience is critical. For example, the two most recent General Counsels of a major energy company spent a number of years in private practice before holding senior roles within the US Department of Justice.

## Increased visibility with the board

The decade-long push for improved corporate governance, increasing regulation and, in some cases, legal troubles have all given General Counsels higher profiles with their boards. Directors turn to the General Counsel for knowledge of best practices in corporate governance, detailed understanding of compliance issues and regulatory issues, and guidance not only about what is legal but what is right. We have witnessed boards becoming heavily involved in massive litigation and government investigations, leading directors to take a strong interest in the caliber and character of the General Counsel.

## Ability to partner with the CEO

Formerly, many CEOs turned to a very senior partner of the company's outside law firm for advice and counsel. More recently, however, many CEOs are looking for that kind of relationship with the General Counsel – for someone who can act as a sounding board, a confidant, as well as

a trusted legal advisor of impeccable integrity. CEOs also want a General Counsel who can act as a valued business partner and weigh risk and reward. In addition, CEOs want someone who is comfortable working with the senior executive team – who thinks like a principal, not an agent, as outside counsel might, and who can help find solutions that advance the business instead of simply saying no. The General Counsel should also have personal chemistry with the CEO and senior management; otherwise, success in the highly sensitive role of Chief Legal Officer is unlikely.

Interestingly, the average tenure of incumbent General Counsels – 6.67 years – closely tracks the average tenure of CEOs, which in the past decade has dropped from 8.1 to 6.3 years (*fig 3*). Many CEOs of course bring in their own General Counsel when they assume the chief executive role, and that General Counsel departs with the advent of the next regime, so it's not surprising that the tenure figures would be roughly the same. But the length of tenure for both CEOs and General Counsels may conceal a more important truth: both the chief executive job and chief legal job have become more demanding than ever.

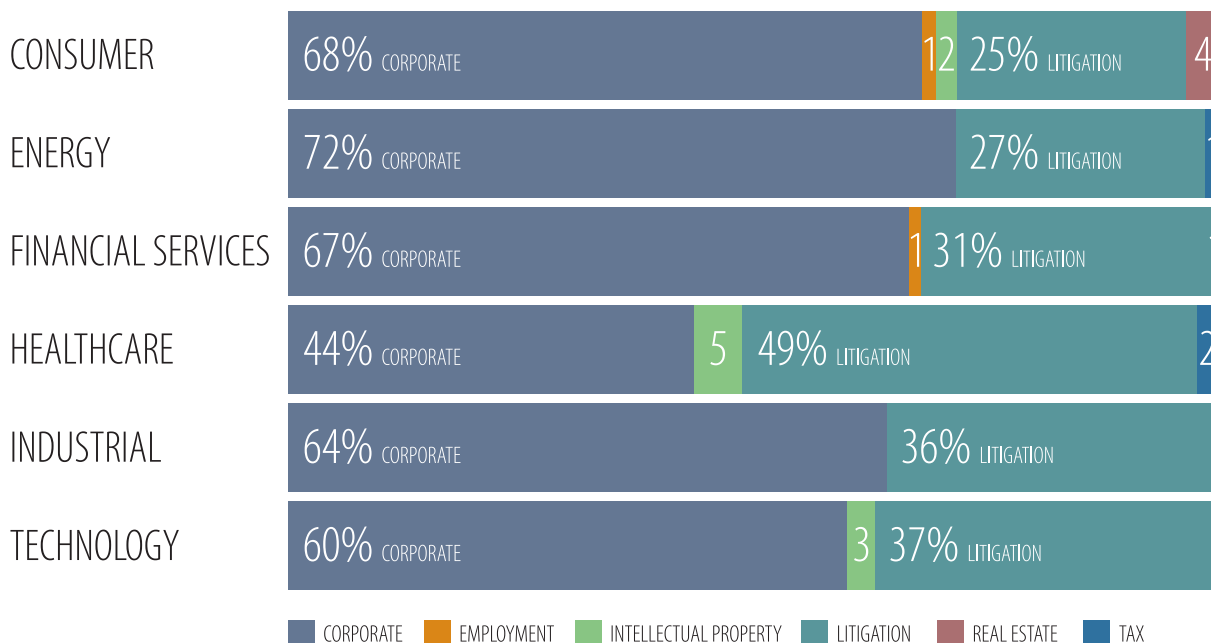
## Conclusion

If the role has become more demanding, it has also become more interesting to the best and the brightest. Top performers in law firms and government, as well as corporate incumbents looking for even greater challenges, are increasingly drawn to a role that will allow them to exercise the full range of their skills and interests. They want to participate in the business and offer their strategic as well as legal insights which they have acquired over the course of their careers. They relish the opportunity to work with diverse constituencies, from the Board to the CEO and senior management to regulators and government. And they welcome the management responsibilities that go with running a legal function, developing talent, and growing in-house legal resources. Candidates who can meet those expanding challenges may be harder to find, but they are easier to attract – and to retain. ■

**figure 1 – Background**

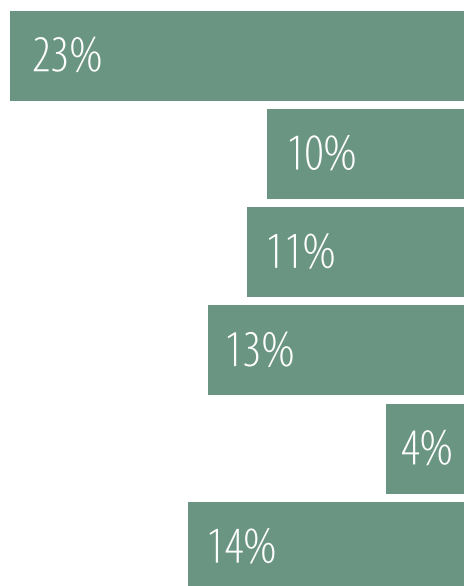
“What was the general counsel’s primary practice area before becoming the general counsel?”

Based on analysis of the Fortune 500 companies done by Heidrick & Struggles in 2010



**figure 2 – From another industry**

“Was the general counsel hired from a company in a different industry?”



**figure 3 – Tenure**

“How long has the general counsel been in their current job?”



# Legal, Risk, Compliance & Government Affairs Practice

The Heidrick & Struggles Legal, Risk, Compliance & Government Affairs Practice offers specialist knowledge in this space and has a tremendous track record of executing searches and offering industry analysis at a country, regional and global level. Please contact a member of our team if you require any assistance:

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## HEIDRICK & STRUGGLES

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