

# The Evolving Role of General Counsels in Corporate Legal Strategies

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## **ABSTRACT**

Law evolves over time. Its scope and applicability in various other subjects of human life increased. Besides courts, lawyers' presence became significant in the corporate world as well. In India, the term 'General Counsels' is used to refer to those lawyers that work for a company by assisting it in various matters like Incorporation, Compliance, Tax laws, Corporate transactions, Mergers and acquisitions, Employment and Labour laws, Corporate Social Responsibility, Business strategies, Board meetings rules and requirements, Winding up process. A legal team works in the legal department with the team members having assigned particular fields based on their skills and specialisation. They will need to be qualified and experienced to be able to do justice to this job. Good interpersonal skills and negotiation skills is a must for him since his job mostly entails interacting with executives and other officers-in-charge. A General Counsel is more desirable if he has specialised in any particular area in law above and beyond the basic qualification of LLB. He is duty-bound to ensure that he is up-to-date about any legal changes that could affect his company. Apart from having knowledge of current affairs in law, companies also expect the GCs to assist them with marketing strategies and give advice about the growth potentials of the Company. GCs' work hours are just like regular employee's. They get a monthly salary. Having them is a costly affair for a small or medium size company as there isn't much need for them to be present everyday. Such companies could opt for any local or remote law firm. But the job done will be more standardised and not in the best interest of the company since the lawyer(s) of the firm don't know the company, its way of functioning, etc. Looking into HR related issues is also a challenging task for a firm. Once the transaction is done, the firms don't notify the company about any future legal update that affects the company.

**KEYWORDS:** Corporate legal strategies, General Counsel, M&A, Criteria, Challenges.

## **HISTORY**

Law is a study of interdisciplinary subjects. Lawyers deal with various affairs like criminal offences, civil matters, marital disputes, distribution of family properties, intellectual property and patent cases, cybercrimes, etc. And in recent times, a lawyer's role has widened into corporate roles. More and more start-ups and businesses started coming up in this globalised era, along with mergers and acquisitions taking place both inside and outside the country. As businesses started being regulated by various laws like Companies Act and Companies rules, SEBI regulations, Tax laws, Employment and labour laws, the businessmen felt the need of having a professional in their companies to look over the company affairs and assist with compliances. And so General counsels came into being.

## INTRODUCTION

From startups to conglomerates, from incorporation to insolvency proceedings, every body corporate needs a lawyer time and again. The General Attorneys usually interact with the executives and provide guidance in various activities undertaken in a company. Those include Corporate transactional work, Compliance, Taxations, Litigations, Patent, Trademark, Merger and Acquisition, Labour and Employment laws.

The reason why they have come to be called as ‘general’ counsels is because they touch upon almost all the business activities as they all have legal implications. They are called ‘counsels’ because they provide advice to the top executives and guide them to help them run the management in a lawful way.

## AREAS GENERAL COUNSELS WORK IN

### **Corporate transactional work/ Drafting**

They typically draft, amend and review contracts like Memorandum, Articles, Mergers and Acquisition agreements, Share Purchase Agreement, Shareholders Agreement, lease agreements, contracts and contractor agreement, sale and purchase agreement, etc.

### **Mergers and Acquisitions**

Mergers and Acquisitions agreements are special contracts that change the business structure, ownership and power dynamics.

Merger agreement is typically entered into when one company combines with another to share the books of accounts, assets and liabilities, profits, company name, technologies, licences, etc.

Acquisition Agreement is specially very important as it lays down the powers, rights and liabilities of the ‘acquirer’ and the ‘acquired’.

If any other business entity expresses interest in acquiring the company, the GC must seek to maximise the consideration amount payable by the acquirer. He must negotiate to the best possible terms, while having estimated the company’s worth, trademarks, patents, goodwill and the brand name owned by the company. He must go through the Acquisition Agreement thoroughly, read between the lines and completely understand the terms and conditions, and identify and negotiate any clause(s) prejudicial to the company. He can then give his legal opinion to the company- whether or not the company must opt for it.

If the company is the acquirer, the General Counsel will have to take many more factors into consideration. The local laws applicable to that entity, the tax implications, monetary value of that entire business, finance availability of the company, how far will it be beneficially for the company to acquire that entity, predicting the impact of the acquisition on the company’s market value and share prices before deciding. And if the company decides to acquire, the GC will have to draft the Acquisition Agreement which would be legally binding on both the parties and must remain on agreeable terms even after the negotiations.

### **Legal compliance matters**

It is their responsibility to constantly monitor the company to make sure that it is compliant with all the relevant provisions there are- such as the Companies Act, Companies Rules, SEBI Rules and Regulations, and other legislations that are industry-specific.

In the food industry, having ISI marks and AGMARK is beneficial. These certification marks signify that the product has met certain quality standards and is safe for consumption. The ISI (Indian Standards

Institute) mark is mandatory in certain packaged products in everyday use; while the AGMARK is voluntary and certifies the quality of only agricultural products. The companies having these marks will come across as more trust-worthy and credible. The general counsels can attain these certification marks, both- for the company's revenues and for consumer safety<sup>1</sup>.

In the construction industry, the company must comply with various laws including the Real Estate (Regulation and Development) Act, 2016 (RERA), The Indian Contract Act, 1872, The Environment (Protection) Act, 1986, The Land Acquisition Act, 2013, Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, Contract Labour (Regulation and Abolition) Act, 1970, Goods and Services Tax (GST) laws.

For public companies, SEC reporting and disclosure is a central part of the GCs' job<sup>2</sup>.

### **Finance team**

The GCs must communicate effectively with the finance department regarding the legal matters that require the company money. It can be the amount to be deposited to the courts during the pendency of any litigation, taxes, any registration and compliance fee payable to the Government, Registrar, etc. In order to effectively perform their duty in this regard, they must have financial knowledge too.

### **Taxation**

The general counsels may assist in finding loopholes on how the amount of tax payable can be reduced within the legal bounds and ensure that the company abides by the standard rules and procedures to be followed in submitting tax reports. Compliance with the Income Tax Act, 1961 and other applicable legislations is the most crucial part of being an in-house counsel.

### **Trademark**

The General Counsels need to look into, and make the Company comply with, the Trademark Act in cases where there are any creations that need to be registered in the name of the Company. Trademark gives the company exclusive rights over its name, logo and slogan(s). By getting the company the required trademark, the General Counsels protect the company's unique identity and they sue those who try to use a similar name, logo or slogan. The General counsels need to also keep in mind that the trademark of the company is promptly renewed every ten years.

### **Patent**

The General Counsels need to look into, and make the Company comply with, the Patents Act, 1970 in cases where there are any innovations that need to be registered in the name of the Company.

Not every product design and model gets easily patented. It must be established that the product design is distinct and strongly associated only with that company. It stands unique but due to chances of replication and potential business loss to the company, it wants the design patented. But this exclusive right has a

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<sup>1</sup> *What is the difference between ISI Mark and AGMARK*, RAAG CONSULTANTS (Nov. 18, 2023, 1:57 PM), <https://www.raagconsultants.co.in/post/what-is-the-difference-between-isi-mark-and-agmark>

<sup>2</sup> David M Love III, Mark Roellig and Tom Spelt, *So you want to be a General Counsel? How to maximise your chances*, SPENCERSTUART (Nov. 27, 2023, 3:19 PM), <https://www.spencerstuart.com/research-and-insight/so-you-want-to-be-a-general-counsel-how-to-maximize-your-chances>

validity period of only 20 years, which cannot be extended and the design becomes a part of the public domain. After the 20 year term, neither the company nor its legal team can prevent anyone else from copying their innovation/ design.

### Labour and Employment laws

The lawyers that specifically deal with this area are called Human Resource (HR) lawyers since they handle employee related policies like appointment, performance management, payment, safety, workplace environment, benefits and query resolution<sup>3</sup>. They also manage employee related issues like resignation, lay-off, workplace discrimination, sexual harassment, unfair payment, trade disputes, etc.

The GCs need to have complete understanding of the industry the company works in and the acts governing that industry in order to be able to draft the most suitable contract of employment. They frame the employment agreements containing certain general, job post-specific, industry-specific conditions<sup>4</sup>.

### Digital and cyber security

The GCs must work closely with the IT, cyber security and technology teams to ensure smooth and secure digital transformation across the organisation. With increased innovation and involvement of new technologies like AI everyday, the digital security system of the company must be as secure as possible to avoid data theft, security threats, privacy breaches, or physical threat. The company servers containing information on its affairs, transactions, private and sensitive customer information, etc. are vulnerable to risks and compliance matters<sup>5</sup>.

### Arbitration

ADR mechanism is cost effective, less time consuming and more efficient<sup>6</sup>. The GCs must try to get the disputes settled in this quasi-judicial system governed by the Arbitration and Conciliation Act of 1996

### Board relations

He is expected to be abreast about all the company matters- like change in policy by attending the board meetings and committee meetings<sup>7</sup>. Knowing the intent of the top executives helps in gaining a little insight about their expectations from the General Counsels. The GCs also need to ensure that the Directors are not conducting business in violation of any of their fiduciary duties<sup>8</sup>.

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<sup>3</sup> *What is a General Counsel? (With Job Duties And Skills)*, INDEED (Nov. 27, 2023, 3:52 PM), <https://in.indeed.com/career-advice/finding-a-job/general-counsel>

<sup>4</sup> Vivek Vashi and Prakritee Yonzon, *The role of in-house counsel in India*, WESTLAW (Nov. 26, 2023, 8:52 PM), [https://content.next.westlaw.com/practical-law/document/leaf71642641111e38578f7ccc38dcbee/The-role-of-in-house-counsel-in-India?viewType=FullText&transitionType=Default&contextData=\(sc.Default\)](https://content.next.westlaw.com/practical-law/document/leaf71642641111e38578f7ccc38dcbee/The-role-of-in-house-counsel-in-India?viewType=FullText&transitionType=Default&contextData=(sc.Default))

<sup>5</sup> *Balancing Innovation and Risk Management: The General Counsel's Role in Driving Digital Transformation*, FTI CONSULTING (Nov. 26, 2023), <https://www.fticonsulting.com/insights/articles/general-counsel-role-driving-digital-transformation>

<sup>6</sup> Vivek Vashi and Prakritee Yonzon, *supra* at 4

<sup>7</sup> *A day in the life of a general counsel*, ROBERT WALTERS (Sept. 14, 2023, 2:41 PM), <https://www.robertwalters.us/blog/a-day-in-the-life-of-a-general-counsel.html>

<sup>8</sup> Toni Hoy, *What Is General Counsel and How Does This Role Help Your Board?*, BOARD EFFECT (Nov. 14, 2023, 10:28 AM), <https://www.boardeffect.com/blog/role-general-counsel-governance/>

### **Business strategies**

The GCs must break the notion that the legal team only knows law in theory and procedure. The GCs must be more than just a lawyer<sup>9</sup>. They must take additional action to learn about how the company operates. Having a background about the business undertakings helps the GCs analyse the business transaction and also look into the long-term impacts of any business decision.

### **Research and analysis into proposed laws and agreements**

GCs must be able to research, find and analyse the laws and regulations that apply to the company and propose the most appropriate solution<sup>10</sup>.

### **Product description and selling**

Every goods producing company is required to make some mandatory disclosures in the product marketing and selling process. Some disclosures are so crucial that failure to do so could attract lawsuits. The marketing team will need to rely on the General Counsels to inform them about any important information they might have missed. For instance, if the company is planning to put out a banner promoting the launching of a new product, it is mandatory to mention the market price. In the packaging and labelling department, every company is obligated to mention the ingredients and materials used in the product along with the quantity.

### **Marketing**

The marketing team of the company cannot undertake all the campaigns, interview, advertisement activities on its own. They need to work in collaboration with the legal team. The job of the legal department here is mostly to review the marketing campaigns organised by the marketing team and check that it is legally and ethically compliant. If there is any word or phrase in the company slogans that could potentially lead to affecting the business name, they need to ensure that it is changed before the slogan reaches the public<sup>11</sup>.

### **Consumer Compensation claims**

If or when there is any demand for compensation by aggrieved consumers, the General Counsels must try their best to reduce the compensation amount payable by the company since such expenses affect the current and future profits of the company. If such sensitive matters involving customers are not handled with care and caution, the market name and reputation of the company will be at risk<sup>12</sup>.

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<sup>9</sup> *The General Counsel as senior leader: More than “just a lawyer”* KORN FERRY (Nov. 27, 2023, 12:52 PM), <https://www.kornferry.com/insights/this-week-in-leadership/general-counsel-senior-leader-more-just-lawyer>

<sup>10</sup> *Learn About Being a General Counsel*, INDEED (Nov. 27, 2023, 10:02 AM), <https://www.indeed.com/career-advice/careers/what-does-a-general-counsel-do>

<sup>11</sup> Christina McCoey, *Liaising with legal: how marketing and legal build brands together*, ACOUSTIC (Nov. 14, 2023, 10:43 AM), <https://www.acoustic.com/blog/liaising-with-legal-how-marketing-and-legal-build-brands-together>

<sup>12</sup> *Consumer Protection Act - Rights and Responsibilities*, BYJU'S (Nov. 18, 2023, 1:36 PM), <https://byjus.com/commerce/what-is-the-consumer-protection-act/#:~:text=The%20Consumer%20Protection%20Act%2C%20implemented,flaws%20in%20goods%20and%20services>

### **Corporate Social Responsibility**

As stated in Section 135 of the Companies Act, when the company turnover is rupees one thousand crore or more, net worth is over rupees five hundred crores or net profit is more than rupees five crore, the company is obligated to give back to the society in the form of welfare or donations. The company is legally obligated to spend two percent of the net profit earned in the three immediately preceding financial years. The general counsels can ensure that if the company satisfies any of the three conditions, it does some good to the society with that amount. The CSR activities, as specified in Schedule 7 of the Companies Act, 2013, can be used for publicity and creation of a good company image.

Although the lawyers look into only those particular areas they have specialised in, at the end, they are all members of the law department. The need for prioritising certain, key legal issues may arise and that puts the entire legal team to work towards it.

### **QUALITIES**

This professional job requires a certain set of skills that would help enhance the quality of work done by such a person.

#### **Broad legal subject matter expertise**

All other skills and qualities are of no use if the General counsel doesn't have any legal knowledge. Being able to understand and interpret the provisions of various Acts is the most essential part of being a lawyer. Without that, he himself will fail to draft any document or agreement in a formal, legal language.

#### **Interpersonal skills**

Ability to maintain good, harmonial relationships with people in the workplace. Having empathy and a positive attitude. Maintaining a right balance between professionalism and friendship.

#### **Excellent communication skills**

the real task lies in being able to convey all the essential terms and conditions they include in the documents they draft. They must make sure to avoid any legal jargons while advising so that the message is clearly understood without any confusion or misunderstanding.

#### **Negotiation skills**

The GCs must have the influence and tactics required to seal a deal that is more favourable to the company or equally beneficial.

#### **Marketing communications**

They must know the marketing strategies adopted by the company and update or inform the executives about potential legal issues that may arise.

#### **Up-to-date knowledge**

The General counsels conduct research to stay up-to-date on the actions of the legislature like implementing of new policies, regulations and guidelines that might affect the organisation and industry they work in.

**Identifying geopolitical risks**

If the company functions on a globalised scale, the general counsels must constantly be aware of the legal and policy changes taking place in all the countries the company deals with.

**Sound judgement and the ability to evaluate options fairly**

In matters regarding court proceedings, negotiation of a deal or discussion of terms and conditions of an employment contract, the General Counsel has to be very careful and cautious. He must evaluate all the options fairly before admitting or finalising anything.

**Leadership and a visionary quality**

The GC must be competent and knowledgeable enough for the top executives to seek his advice. They must not be afraid to make tough decisions. The job would require high emotional intelligence and maturity to interact with various departments.

**Absolute integrity**

Staying just and truthful to one's duty must come before making profit for himself or his company alone. He must try to stay fair and equitable in his practices and in the way his actions would affect the opposite party. He must not indulge in any dishonest activities that could negatively affect the company. He must continue staying on the right side when dealing with a grey area<sup>13</sup>. He must be ethically strong with good moral character.

**Innovation and creativity**

The executives may not always give precise, detailed directions about how a particular legal matter is to be dealt with, or what are the basic conditions to be included in any agreement that needs to be drafted. It is the General counsels that need to apply their best judgement and knowledge based on their experiences.

**Travel**

Some companies, especially the ones operating with many branches have the common practice of transferring employees to different places as per the requirement. It provides good exposure and experience, and it becomes an added advantage if the General counsels are flexible with the degree of travel that the company may direct.

**QUALIFICATION**

It would go without saying that a general counsel will need to have knowledge of law and be constantly up-to-date regarding any new Bills being enacted.

**Educational**

A person aspiring to hold a post of General Counsel must have extensive education before taking up the role.

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<sup>13</sup> David M Love III, Mark Roellig and Tom Spelt, *supra* at 2

### **Bachelor's degree**

A 3 year course in LLB or 5 years integrated course like BA LLB, BBA LLB or BCOM LLB after 12th standard helps the person gain general knowledge of all the different types of laws but to have an even more successful career, the GC must have specialised in any law.

### **Specialisation**

The scope of law specialisation is rapidly expanding. There are postgraduate LLM courses that can add to the legal knowledge of a person by letting them gain a much deeper understanding of certain laws and their practical implications. Some suitable areas for specialisation would be tax law, workers' compensation, international law, corporate law, intellectual property law, cyber law and labour law<sup>14</sup>. Although not mandatory, one may choose to take up an MBA course to enhance knowledge in business administration and sharpen their financial skills<sup>15</sup>. They may also opt for an undergraduate business degree.

### **Experience**

Fruitful internships and job experience of at least 2 years. The prior experiences and lessons mentally prepare the GC to face any risk with wit and presence of mind instead of showing risk aversion tendencies.

### **Online presence**

Having technological skills is very useful when it comes to research, dealing with AI, learning world news, knowing about competitors, and staying connected with fellow legal peers through social media.

### **SALARIES AND BENEFITS**

They vary as per education level, skills and capabilities of each individual counsel. Their salary increases as the years of experience increases. The starting salary as a junior is 4.8 Lakh per annum. It can go up to 36 Lakh per year or more, based on experience. In well established corporations, the senior counsels can earn up to 1 Crore<sup>16</sup>.

### **EMPLOYMENT**

The majority of GCs work for companies and firms. But they may also be employed by NGOs or government agencies<sup>17</sup>.

### **DIFFICULTIES FACED**

Their job is so crucial that any error made by them is capable of resulting in the company having to pay huge penalties or fines for violation of rule(s).

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<sup>14</sup> *Law Specializations in India - 10 Popular and Interesting Law Specializations*, CAREERS360 (Nov. 27, 2023, 3:29 PM), <https://law.careers360.com/articles/law-specializations-in-india>

<sup>15</sup> David M Love III, Mark Roellig and Tom Spelt, *supra* at 2

<sup>16</sup> *Indian senior GCs can earn from Rs 80-300+ lakh per year, says recruiter*, LEGALLY INDIA (Nov. 21, 2023, 9:05 PM), <https://www.legallyindia.com/in-house-counsel/indian-gcs-can-earn-more-than-rs-300-lakh-per-year-says-recruiter-20150721-6311>

<sup>17</sup> *supra*, at 10



In their interaction with the marketing department, they are helpful only to the extent of finding any non-compliance or potential risk. They do not provide any alternative solutions that would be lawful<sup>18</sup>.

The company and its various other departments keep the legal team as a last resort and burden the legal counsels with court notices and consumer disputes after the matter becomes tricky for the attorneys to work with.

The in-house counsels who work on monthly salaries make less money than the external law firms that charge hourly.

The GCs cannot represent the Company in court as per Rule 47 of the Bar Council of India Rules. Even though they may be competent to present arguments and get the decree in favour of the company, they are not qualified as ‘advocate’ and therefore ineligible to argue in any case. As per the Act, anyone enrolled with the Bar Council cannot carry on any other business, occupation or employment, and those not enrolled, are not fit to represent anyone before the court of law<sup>19</sup>. Since being an in-house counsel is an employee, the company has to appoint an advocate to proceed in court matters.

Due to the complex and broad-based thinking of the GCs, although they are knowledgeable and experienced in law, sometimes, their solutions and legal approach is limited in scope. They may have comparatively few solutions for an issue as against law firms that specialise in providing legal opinions on similar issues for many years. These firms tend to be able to offer a variety of solutions in detailed descriptions<sup>20</sup>.

## HOW TO OVERCOME DIFFICULTIES AND CHALLENGES

Legal advice must be sought at the initial stage, before making any major decision or taking any big step. This way the legal department can advise the company well ahead of time, ensure compliance and mitigate the potential risk of lawsuit.

The GCs must be able to represent their company in courts. It will help in initiating and concluding the proceedings sooner and more efficiently since the GCs already know the legal issue closely and are well aware of the facts of the case. The cost and time spent on hiring and briefing external legal assistance is also saved.

## NEED TO OPT FOR GENERAL COUNSELS

Although GCs are seen as a ‘cost centre’<sup>21</sup>, companies must still opt for them instead of individual lawyers or law firms as they know the company history, MOA, AOA, particular conditions and clauses that are particularly right for the company. Any outside lawyer or law firm only works with the company when a requirement arises and they deal with different other companies too. Their drafts may be more general as they have no knowledge about the company to do anything above and beyond what is expressly told by the company. The legal counsels will be more quick and efficient and are easy to approach to get the work done since they already have an idea about the additional conditions to be incorporated along with a

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<sup>18</sup> Laini Bennett, *How to Transform the Relationship Between Your Marketing and In-House Legal Teams | Part 1*, LEGAL VISION (Nov. 14, 2023, 10:33 AM), <https://legalvision.com.au/relationship-between-marketing-legal-teams/>

<sup>19</sup> Vivek Vashi and Prakritee Yonzon, *Supra*, at 2

<sup>20</sup> *Id.*

<sup>21</sup> *In-house vs Law Firm: Which Path is Best for You?*, MOMENTUM SEARCH PARTNERS (Nov. 26, 2023, 7:01 PM), <https://www.momentumlegal.com/news/in-house-vs-law-firm-which-is-best/>

general draft. And the company will be able to check the progress more conveniently and suggest changes immediately, without waiting till the final draft is presented. This way, the company will be able to minimise wasting the time and energy of the legal counsels.

The role of the GCs is far more greater in the company affairs than a law firm. GCs are also business strategy advisors. They attend the board meetings and advise the executive heads.

## **CONCLUSION**

Being GC is one of the best jobs in the corporate world. GCs are the go-to advisors for the top-executives. They possess various skills and qualifications that come in handy while performing their duties. Apart from strictly legal, they also take part in the business, finance and marketing department. They need to be business-minded too so that they can advise as per what is best for the company and not just what is right as per law. It is a 24/7 job, requiring the GC to be risk taking, accepting challenges, learning new skills and acquiring knowledge everyday. They must possess good personality traits, all essential skills like drafting, negotiation, advising, compliance, due diligence, etc. No job is without difficulties and limitations, and this role is no exception. Only highly skilled and competent lawyers can succeed in this job. They are a valuable asset to the company they work for.