

A CHIEF EXECUTIVE/BARKERGILMORE
RESEARCH STUDY

THE ROLE AND VALUE OF TODAY'S MODERN GC

THE CEO PERSPECTIVE

Chief Executive

barkergilmore

Public or private, big or small, global or domestic, all companies need legal counsel.

While for many, the scope of responsibilities of their GC has expanded manifold over the past decades, for others, the chief legal officer remains a legal risk manager. As new risk factors continue to emerge alongside digital transformation and technological innovations, increased data privacy and cyber vulnerabilities, intensifying scrutiny into culture, values and diversity practices, as well as the mounting social call for enhanced sustainability and corporate responsibility, the concept of a corporate lawyer retained to oversee regulatory compliance is no longer sufficient to navigate today's challenges unscathed.

In February 2020, Chief Executive and BarkerGilmore partnered to survey more than 100 CEOs to discuss the evolving role of the GC amid an increasing flow of disruption. This report presents our findings and best practice advice from peer CEOs and business experts.

KEY FINDINGS



Almost all public company GCs are now an integral part of the senior leadership team, compared with only 57 percent of private companies.



Business acumen is the top area where CEOs say their GC could improve to further add value to the team.



Overall, the majority of companies have not yet identified a successor for their GC—a proportion that is closely correlated to company size.

THE ROLE OF THE GENERAL COUNSEL HAS

evolved significantly over the past decades, from a pure legal risk management function in the 1980s to that of adviser to the CEO—and board—on many aspects of the strategy through the 2000s and 2010s. If it hadn't been proven before, the argument for this evolution has undoubtedly been brought into evidence in recent years, when the constant state of disruption and a slew of corporate scandals have further exposed the critical importance of the GC at the executive table.

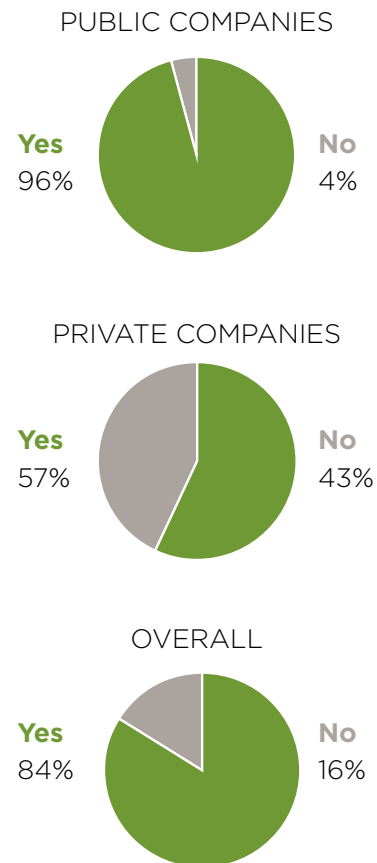
As we enter a new decade, one already marked by events unseen in a century, companies face many new risks most had not been prepared to overcome. Interpreting regulatory changes and evolving rules for business operations, setting a daily cadence to review the current status of events and reassess planned decisions, and providing strategic guidance to keep business moving forward are imperative tasks of today's legal chief. Having a GC who can contribute to the conversation on all aspects of operations and strategy is no longer a nice-to-have. It has become a necessity.

Many companies have heeded the call. Just four years ago, in a 2016 survey conducted by Corporate Board Member (then NYSE Governance Services) and BarkerGilmore, 97 percent of public company directors said they expected their GC to be an integral part of the senior executive team by 2020—up from 81 percent who already were 10 years prior. When polled in early 2020, 96 percent of public company CEOs confirmed this had, indeed, become the new reality.

"I see the GC as a strategic risk partner," says Brad Feldmann, CEO of Cubic, a global industrials company traded on the NYSE. "Certainly, there are legal matters that have to be dealt with, but my GC helps me think through the implications of risk and, therefore, the appropriate action."

While this is a resounding stance to come out of our survey among public companies, collected data shows that private companies continue to lag

Is your general counsel a member of the executive management team?



in this area, with only 57 percent of CEOs reporting that their GC is a member of the senior executive team.

On average, private companies tend to be much smaller than their publicly traded counterparts, and general counsel at small and mid-sized companies (up to \$1 billion in annual revenues) are typically entrusted with more corporate administrative duties than strategic advisory roles. Others choose to only retain legal counsel as needed and have made a strategic decision to keep the function external to the company altogether.

Yet, the majority of CEOs in our study say the role the GC plays in providing early legal input into the strategy and its translation into operations is critical regardless of size. In fact, possibly even more so with smaller, more fragile companies that must have a robust risk mitigation strategy in place to survive the constant flow of disruption.

Having a strategic legal chief who can provide expert insights into activities impacting the overall performance and financial health of the company (such as credit agreements & M&A activities) is equally important for companies of all sizes. In fact, business strategy and

Top 3 areas of improvement for GCs

- 1 BUSINESS STRATEGY
- 2 NEW MARKET EXPANSION
- 3 INDUSTRY KNOWLEDGE

Top 3 areas of greatest impact by GCs

- 1 LITIGATION/
INVESTIGATION MANAGEMENT
- 2 RISK MANAGEMENT
- 3 CRISIS MANAGEMENT

“ I see the GC as a strategic risk partner. Certainly, there are legal matters that have to be dealt with, but my GC helps me think through the implications of risk and, therefore, the appropriate action.”

—Brad Feldmann, CEO of Cubic, a global industrials company traded on the NYSE

industry knowledge have repeatedly come up as areas where CEOs across both public and private companies say they would most like to see their GCs improve, according to our surveys and BarkerGilmore’s field experience in conducting executive searches: 53 percent of public company directors surveyed in a subsequent 2017 study conducted by Corporate Board Member and BarkerGilmore agreed that the main area improvement for their GC was business strategy.

“Some GCs are great businesspeople, and others are great lawyers,” observes Mike Cote, CEO of SecureWorks, Dell’s cybersecurity services operator (NASDAQ: SCWX). Cote, who’s been leading the company since 2002 and was retained as CEO after Dell’s purchase of the company in 2011, says that while it really depends on the individual filling that seat, “as a CEO, you have to make sure that you’ve got your management team filled out so that you get the business confidant, advice and help [you need].”

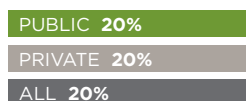
Currently, only 61 percent of public company CEOs and 40 percent of private company CEOs view their GC as a strategic business partner—although 4 out of 5 of the remaining CEOs say their ideal GC would, indeed, be one who acts as a strategic business partner and is a valued member of the leadership team. What’s more, none of the private company CEOs surveyed and only 6 percent of public company CEOs believe their GC adds the most value by contributing to the business strategy discussion.

CEO assessment of their Sitting General Counsel:

Acts as a strategic business partner and is a valued member of the leadership team



Expresses views on business strategy and operational issues purely from a legal perspective



Acts solely as a legal counselor and manager of legal risk

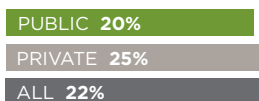


CEO assessment of their Ideal General Counsel:

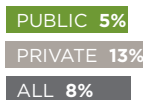
Acts as a strategic business partner and is a valued member of the leadership team



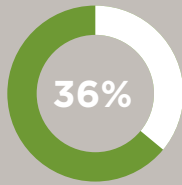
Expresses views on business strategy and operational issues purely from a legal perspective



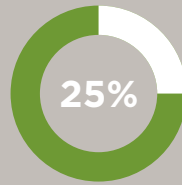
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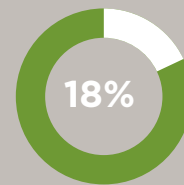
TOP 3 WAYS THE GC ADDS THE MOST VALUE FOR PRIVATE COMPANIES



Offering risk analysis expertise

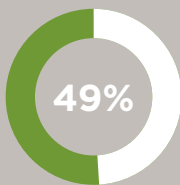


Acting as an adviser to the CEO

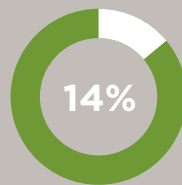


Serving as an ethical sounding board

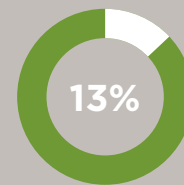
TOP 3 WAYS THE GC ADDS THE MOST VALUE FOR PUBLIC COMPANIES



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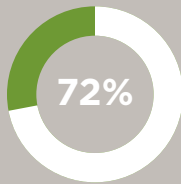


Offering risk analysis expertise



Mitigating risks through the execution of the business plan

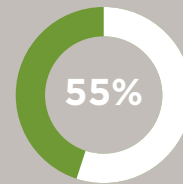
TOP 3 AREAS WHERE PRIVATE COMPANY GCS ARE MAKING THE GREATEST IMPACT



Litigation/investigation management

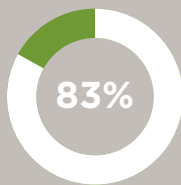


Crisis management

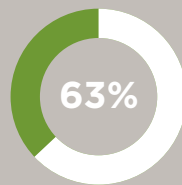


Risk management

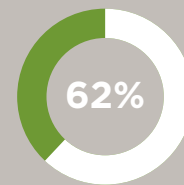
TOP 3 AREAS WHERE PUBLIC COMPANY GCS ARE MAKING THE GREATEST IMPACT



Litigation/investigation management



Risk management



Crisis management

Preparing for the Future

As younger generations come onto the workplace, seeking different experiences, embracing new technologies and emphasizing the value of a more diverse corporate culture, companies are forced to revisit their business models and, as a result, scope of risks. Namely, CEOs and leadership teams must now assess the risks—and opportunities—afforded by their community involvement, raw material sourcing, supply chain management, third-party affiliations and a host of other human-related strategies that may not have been top of mind for GCs in the past.

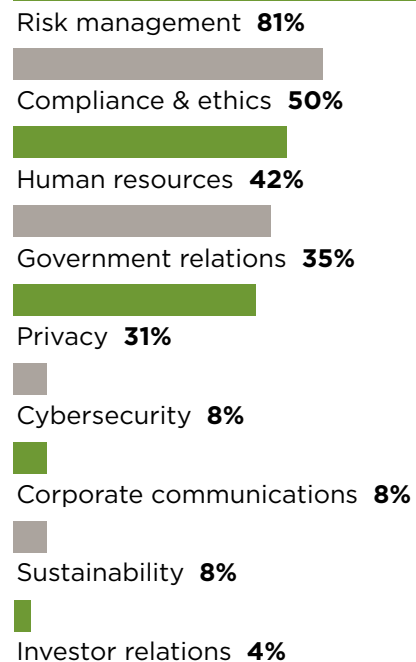
The research shows that only 22 percent of GCs are involved in the oversight of human resources, and only 17 percent of GCs oversee cybersecurity. Those are examples of prominent areas of a corporation where having the GC perspective, with more of an eye toward risk, can be of tremendous value. While you can always bring insight from a true legal perspective to the table, sometimes risk isn't always legal in nature. When talking to the SVP of HR, for instance, the analysis isn't always about if something is legal or not legal; it's about the full chain of consequence from a single decision—or lack of action.

Incorporating the GC into those discussions is also about doing what the company feels is right from a stakeholder perspective and having the conversation to make sure it is aligned to those expectations. Generally, on all topics, regardless of if they are legal in nature, a good GC can bridge the gap between departments and make sure each department understands the risks when evaluating when and if to make decisions.

"The general counsel is a key officer in our company, and she has latitude to have oversight over everything," says Feldmann, who says this is especially true within the realm of ethics, a function that reports to the GC. "People are our most important consideration, and we have a very good compliance program and code of conduct that her team puts together. She is a key strategic risk partner of mine."

Feldmann says the role of his GC has, in fact, been even more prominent in the Covid era. "We didn't have a COVID-19 working group before, obviously, and she's helping me deal with the crisis. The information flow is high, and as governors were shutting down states and

Areas outside of law PRIVATE company GCs oversee



*Respondents were asked to select all that apply.

countries, we tried to stay on top of all of that and inform our employees of changes immediately, so they don't hear about it in the news. She has been a key partner in all of this."

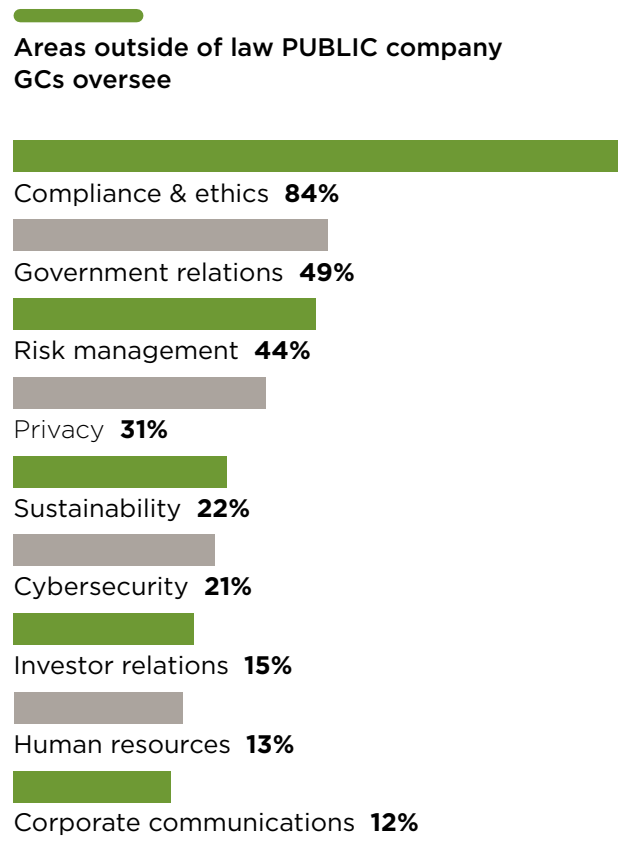
Cote says the GC's transition to a strategic partner began years ago: "Lawyers wanted to get involved in more than reporting history or dealing with documenting the legal work of a decision made but actually creating, having the ability to influence a company and make decisions and drive it forward and get equity and contribute in a different manner," he says. "Those GCs have really strived to say, 'I understand my basic role is to do the risk management and legal work, but I can also add value in the decision-making process around strategy.'"

He says in his role of CEO, he expects the people in his C-Suite attending the company's daily briefs to be able to contribute not just in their functional area, but across the various functions as a unified entity, "where we respect each other for our opinions and thoughts, taking the customer's view, taking our shareholders' view, taking our employees' view, and really looking at this from a holistic perspective coming from their specific discipline."

As we recover from the COVID-19 crisis and temporary economic shutdown, companies will need to revisit their model and operating structure to assess vulnerabilities they may not have recognized earlier and identify areas of opportunity moving forward. Companies with GCs scheduled to retire within the next two to five years need to start considering how to make that next strategic hire, one who will be equipped to wear the multiple hats the role of the counsel now requires—whether that is by assessing internal candidates or looking outward and setting the bar.

Our research reveals that more than half (58 percent) of CEOs have not yet identified a potential successor to their current GC—that number increases to 75 percent among private companies specifically. That is an alarming proportion considering how, in today's era of disruption, having a successor for this key C-Suite executive is essential to avoid any gap in leadership, navigate unexpected events and maintain continuity of operations.

Once again, we understand that company size is a



*Respondents were asked to select all that apply.

significant factor in this finding, with 95 percent of the smallest peer group in the study (companies with \$100 to \$249.9 million in annual revenues) saying they do not have a successor in place, compared to 45 percent for their larger counterparts (\$1 billion+).

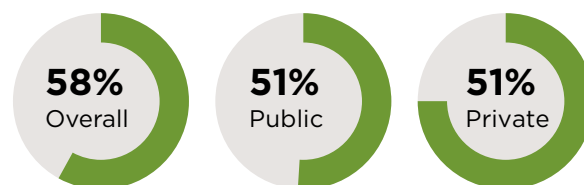
Ideally, every company would have an internal grooming program, adapted to their reality, to benchmark against external talent. This strategy may be more realistic for companies with sizeable legal departments, while smaller companies may find it more complex to implement. Nevertheless a GC acting as the standalone attorney for a small company can, for instance, form a relationship with a law firm partner who fits the corporate culture and, ultimately, learns the business and understands the objectives of the executive leadership team. If necessary, this lawyer can serve as an interim GC or even be hired as the replacement.

If a small company can justify hiring one or more attorneys to work for the GC, the hiring criteria should be for one or more of these attorneys to have the emotional intelligence, intellectual curiosity, communication skills, leadership abilities and business acumen necessary to mold into a GC successor. The GC needs to take the steps to push succession candidates outside of their comfort zone or practice area and, ultimately, give access to the SLT and board. Being highly selective during the interview process is the key to landing a lawyer who ultimately can be developed into a strategic successor.

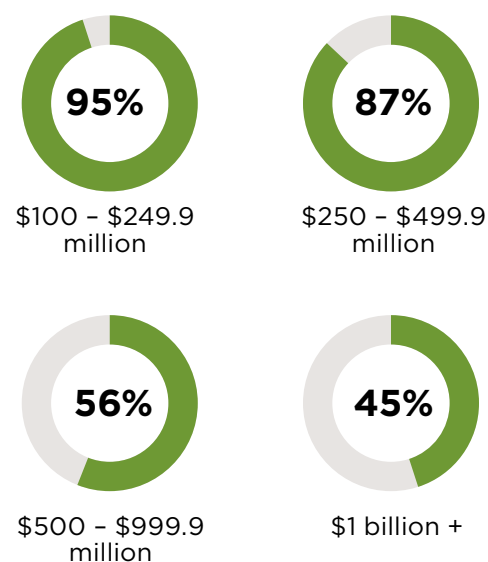
Finding the right GC is certainly no longer a check-the-box exercise. Technical training is no longer sufficient to step into what is now an advisory role to the CEO—and, often-times, the board. The GC must understand the business, the industry, the overarching strategy, culture, mission, etc. Therefore, even companies with identified successors are advised to benchmark internal talent against external to ensure their candidate is the best strategic hire and an individual whom the CEO feels has the gravitas and all the key characteristics necessary to become the GC in that two to five year period—even if it, ultimately, ends with a promotion from within.

In fact, one of the biggest pitfalls for CEOs is stereotyping where the successor must come from. Most times, the successor is a corporate lawyer ex-

Companies Without A Potential GC Successor



Companies Without A Potential GC Successor, by Annual Revenues



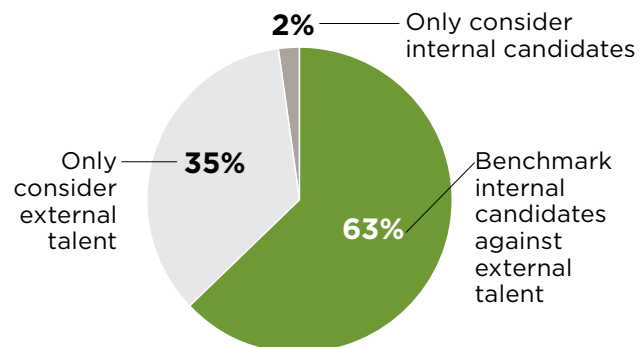
periencing significant exposure to the board as corporate secretary or assistant corporate secretary. Meanwhile, a litigator or GC of a business unit may be better prepared to serve during crisis situations. Opening the candidate pool to include an external search also provides a greater chance of the position being filled with diversity. [According to BarkerGilmore research](#), every year, approximately 10 percent of Fortune 500 companies appoint a new GC. In 2019, 56 lawyers were appointed to the enterprise GC or CLO post, of which 20 were women replacing male incumbents. The number of minority successors is also improving compared to just five years ago.

Fortune 500 companies typically have the bench strength to groom their candidates and hire from within. Our 2020 research shows that only 2 percent of CEOs expect to be able to count only on their internal roster. More realistically, 63 percent of CEOs say that when it comes time to replace their general counsel, they would benchmark internal candidates against external talent—a number that increases with company size.

Cubic's GC is fairly new to the company, having joined in the fall of 2019. When asked if diversity was a factor in the search, Feldmann says, "Diversity is always a criteria."

He says his company always looks at the diversity ratio among top-level roles—including the board, which has four women out of nine members. "That's essential to the process. Innovation is critical to us, and the best way to drive innovation is to have diverse ideas. It turns out diverse backgrounds lead to diverse ideas."

When it comes time to replace our general counsel, we should:



“ GCs have really strived to say, ‘I understand my basic role is to do the risk management and legal work, but I can also add value in the decision-making process around strategy.’

—Mike Cote, CEO of SecureWorks, Dell's cybersecurity services operator

Conclusion

For a CEO, not having a GC who is able to serve as a strategic adviser is the equivalent of a coach at a sporting event with one person missing on the field. As a member of the senior leadership team, everyone should contribute perspective. A nonstrategic GC typically has the reputation of a business blocker, rather than an enabler.

Lawyers are trained to think differently than CFOs and operations folks, so the “lawyer way” of thinking simply adds value to discussions through diversity of thought and approach to a situation. High-performing general counsel are business-savvy advisors on a wide range of issues. Top general counsel are fully functioning members of the leadership team who just happen to be attorneys.

General counsel have a responsibility to the company as a whole rather than to discrete business units or functions and general counsel tend to have a more holistic view of the company and potential risks than other leaders. Great general counsel have a seat at the table, listen to strategic plans and approaches and have earned the right to pump the brakes on the occasions that are necessary.



Contributors

Bob Barker, Managing Partner, BarkerGilmore

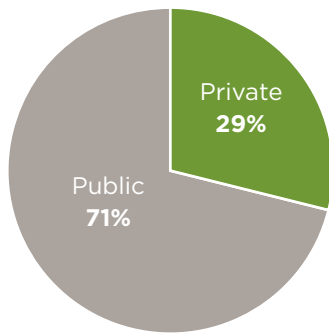
John Gilmore, Managing Partner, BarkerGilmore

Mary Rombaut, Managing Director, Research and Analytics, BarkerGilmore

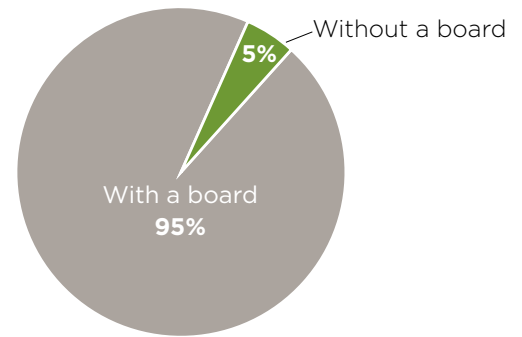
Melanie C. Nolen, Director of Research, Chief Executive Group

Demographics

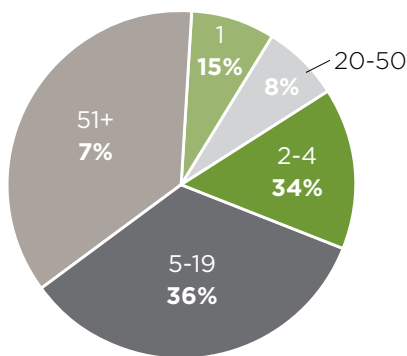
PUBLIC/PRIVATE



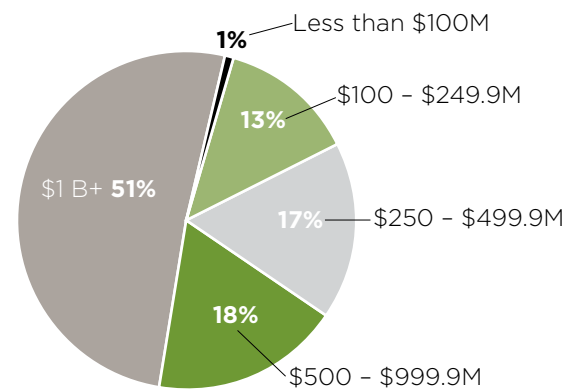
GOVERNANCE STRUCTURE



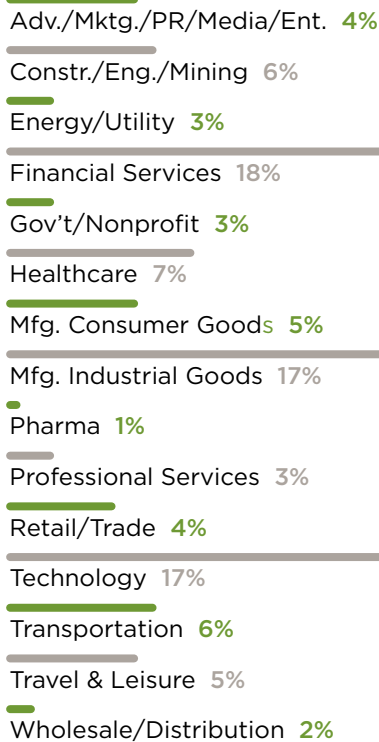
SIZE OF LEGAL DEPARTMENT



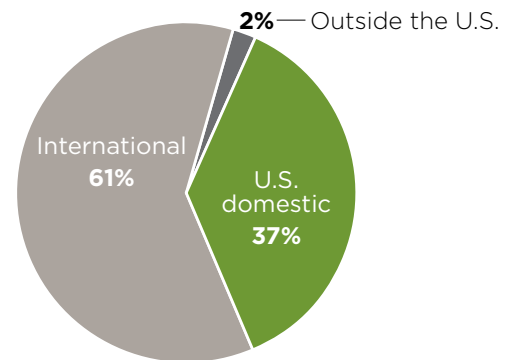
COMPANY SIZE (BY ANNUAL REVENUES)



SECTOR



GEOGRAPHIC FOOTPRINT



Appendix

Is your general counsel a member of the executive management team?

\$100 – \$249.9 million



\$250 – \$499.9 million



\$500 – \$999.9 million



\$1 billion +



CEOs who believe the GC adds the most value for the company by acting as an adviser to the CEO

\$100 – \$249.9 million



\$250 – \$499.9 million



\$500 – \$999.9 million



\$1 billion +



Companies without a GC successor in place

\$100 – \$249.9 million 92%



\$250 – \$499.9 million 88%



\$500 – \$999.9 million 50%



\$1 billion + 41%



Chief Executive

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