

How General Counsel and Business Leaders Can Align for M&A Success

Introduction

The ACC Chief Legal Officers Survey revealed a surge in responsibilities and strategic expectations for CLOs. As department scope expands, CLOs are embracing the opportunity to shoulder more influence in business decisions and as advisors to executive leadership.

This increasing sway over strategic direction includes activity surrounding mergers, acquisitions, divestitures and other high value business transactions. To be effective in this function, CLOs must ensure strong alignment with business leaders and maintain a wide field of view over the many issues that may affect outcomes.

The Role of CLOs

CLOs play a crucial role in advising the CEO and shaping overall business strategy, as 44% identified these contributions as their greatest impact on the organization.

Opportunities for CLOs to strengthen influence with the CEO and other members of the c-suite and board include:

- Develop knowledge and a strategic position related to advanced technologies, including artificial intelligence, automation and blockchain.
- Take a proactive approach toward AI education, training, evaluation and governance.
- Expand the view of due diligence during transactions beyond a financial focus, to include technical, operational compliance, risk and reputational assessments.
- Become a data expert and advise the company on how to effectively approach digital risk.
- Proactively develop and offer roadmaps for how business objectives and new initiatives can be achieved quickly without undermining risk management.

CLO Involvement & Responsibilities

More than half (58%) of CLOs are already heavily involved in mergers and acquisitions and other corporate transactions. There is opportunity for more CLOs to take on related responsibilities.

To do so, CLOs and the c-suite can partner to address considerations including:

- Data privacy and cybersecurity risk assessment of potential targets.
- Technical evaluations to uncover hidden risks in partners' and targets' technology infrastructure.
- New regulatory requirements that may become applicable following an acquisition, divestiture or corporate investment.
- Contractual obligations within the organization and/or within a target, which may carry unknown implications (for risk, financial outcomes, disclosure requirements, valuations, etc.) during and after a transaction.
- Operational issues that may be introduced or exacerbated when working with new third parties.

Steps CLOs Take to Mitigate Risk

Among CLOs at large companies, 41% are most concerned about antitrust investigations and enforcement.

Steps organizations can take to ensure legal and business units are prepared to mitigate this risk include:

- Prioritize information governance initiatives to keep the data footprint in order.
- Establish modern playbooks for litigation and investigations readiness.
- Understand the dynamics and enforcement trends surrounding merger clearance and antitrust compliance across global jurisdictions.
- Map data sources and key individuals that may come into scope in the event of a merger clearance review or antitrust investigation.
- Maintain a bench of trusted advisors and outside counsel to quickly engage if and when regulatory agencies issue an inquiry.
- Help the board understand any known and anticipated antitrust risks that may arise during transactions.

The Importance of Collaboration

CLOs continue to emphasize the importance of interdepartmental collaboration for improved business outcomes. Notably, finance is mentioned as the second most important department for collaboration with legal.

Tips for success in this lane include:

- Engage with the board of directors regularly to communicate key issues and gain support for cross-departmental collaboration, especially during periods of transition or M&A activity.
- Communicate the potential cost of overlooking red flags and risks that arise during due diligence.
- Consider how legal can participate in and lead team and technology consolidation efforts that may help reduce cost, mitigate risk and increase efficiency after a transaction.
- Seek opportunities for joint initiatives where legal can partner with other groups, such as technology implementations that can meet needs across numerous departments or enterprise-wide data disposal projects.

Navigating Private Equity Transactions

For organizations with private equity involvement, under half (47%) say that legal is involved in evaluating competition issues and preparing for potential competition control inquiries related to PE transactions.

As legal and business counterparts transact in the PE space, issues to be aware of include:

- Global competition enforcement agencies have increased their scrutiny of PE-backed deals.
- Due diligence needs are often amplified due to economic factors unique to PE, requiring more rigorous evaluation of risks at every phase of the M&A lifecycle.
- PE firms traditionally haven't needed to maintain robust information governance practices and may not have enterprise-wide IT systems in place to support such efforts, yet are now often required to produce significant documents as part of merger filing and/or merger review processes.
- Organizations and counsel should consider engaging data experts earlier on in the deal-making process to ensure transacting parties comply with data preservation requirements.



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