



Lawyers at the top table

The evolution of the role of general counsel
in UK listed companies

SpencerStuart

ABOUT SPENCER STUART

Spencer Stuart is one of the world's leading executive search consulting firms. Privately held since 1956, Spencer Stuart applies its extensive knowledge of industries, functions and talent to advise select clients – ranging from major multinationals to emerging companies to nonprofit organizations – and address their leadership requirements. Through 50 offices in more than 25 countries and a broad range of practice groups, Spencer Stuart consultants focus on senior-level executive search, board director appointments, succession planning and in-depth senior executive management assessments. For more information on Spencer Stuart, please visit www.spencerstuart.com.

Lawyers at the top table

The evolution of the role of general counsel
in UK listed companies

CONTENTS

Introduction	3
The role of the general counsel	4
What makes general counsel influential?	5
Building influence	6
Should legal and company secretariat functions be merged or split?	7
Balancing workload and efficiency	7
Managing tension and conflict	8
Gaining influence through access	9
Remuneration	10
Conclusion	14
Appendix: FTSE 50 general counsel – potential areas of responsibility	16

During 2005, Spencer Stuart's UK Legal Search Practice conducted interviews with 43 individuals employed by leading UK companies as the most senior person within the legal and company secretariat functions. In a vast majority of cases this turned out to be the general counsel, an interesting reflection on the development of the senior legal role over recent years.

Whereas traditionally the company secretary has been relatively detached from the day-to-day business, providing advisory and administrative support to the chairman and the board, the role today is more often than not absorbed into that of the general counsel, who has, or aspires to, a seat at the top table, and who is increasingly influential in the business.

Our research had three main aims:

- > to gain a clearer understanding of the breadth of responsibility and the level of influence exerted by the general counsel and company secretary;
- > to identify best practice in terms of structure, responsibility and reporting;
- > to identify correlations between levels of total cash compensation and various parameters associated with the company and the role.

While there is clear evidence that the roles of general counsel and company secretary are becoming more influential and well-remunerated in FTSE 50 companies, there are significant variations in the structure and scope of the legal function and company secretariat, and opposing viewpoints regarding fundamental aspects of best practice. Remuneration levels vary wildly: in the upper decile there is parity with the profit share of senior partners within magic circle law firms, but lower decile pay is less than 30% of that level.

Although the majority of people we interviewed are employed by FTSE 50 companies, our findings are clearly relevant to the wider business community.

The role of the general counsel

In this section we examine the role of the general counsel, taking account of the possibility that the role may also encompass that of company secretary. The role of the company secretary is discussed in a later section which explores the pros and cons of a merged function.

The general counsel of a UK listed company typically performs a complex range of interlinking roles critical to the health and stability of the business: from providing corporate governance and legal compliance advice to the board to participating in decision making and policy matters alongside senior executive colleagues; from managing risk to protecting intellectual property; from ethics to internal audit.

The sheer breadth of responsibilities that may fall within the remit of the general counsel is a clear indication that the position is growing in influence – and likely to become more important as companies are increasingly affected by shareholder activism, complex regulations, risk management issues, and the pressures of operating in a global marketplace.¹

This is not to say that all companies recognise the value of the general counsel role or grant a wide range of responsibilities to the incumbent. As the reward spectrum indicates, many companies fail to recognise – or at least underestimate – the potential for a good general counsel to influence and bring value to the business. Since the role of general counsel is not defined by statute or convention, more work clearly needs to be done by companies to develop best practice guidelines that will ensure they get the most out of the general counsel role.

Nevertheless, the role of general counsel commonly encompasses the following major responsibilities:

- > Providing legal advice on a wide range of corporate and commercial issues including merger and acquisition activity, strategic joint venture arrangements, supply and distribution agreements and other commercial contracts.
- > Advising on a broad range of legal matters beyond corporate and commercial including employment, intellectual property, property, insurance and project managing matters arising out of any current or future litigation.
- > Managing the company's overall legal risk position by ensuring that contracts reflect best practice. Ensuring understanding of, and compliance with, any regulatory requirements at all levels within the business.
- > Providing leadership and development to a team of qualified lawyers and chartered secretaries and initiating a clear strategic plan for the delivery of those services to the business.
- > Ensuring that the internal and external resources of the legal team are aligned and organised to most effectively meet the short- and long-term needs of the business.

¹ A list of responsibilities covered by people we interviewed can be found in the appendix at the end of this article.

-
- > Leading and co-ordinating the legal services provided to the company: choosing and managing outside counsel; establishing procedures for evaluating the quality and cost services of outside counsel.
 - > Developing good relationships and credibility with key members of the management team and with the legal team.

What makes general counsel influential?

Three factors usually determine the extent of the general counsel's responsibilities and influence. These tend to have a significant impact on remuneration levels.

FIRST, chairmen and chief executives must be comfortable in the presence of a strong in-house lawyer who has the freedom to challenge or question policies and decisions. They must be aware of what a good general counsel can bring, whether to the board or to the executive, and place real value on the lawyer's perspective.

Several general counsel refer to themselves as part of the "inner circle", playing the role of *consigliere* to the CEO. These general counsel almost always sit on the executive committee, are co-located with the CEO and are available for regular and *ad hoc* one-to-one meetings.

SECOND, the nature of the business affects the scope of the role. Large, complex, international companies invariably require a general counsel with a sophisticated business sense, strong management skills and the ability to cope with a broad portfolio.

As the importance of governance, compliance and risk management grows alongside the threat of litigation, the legal function is bound to exert ever greater influence within the organisation. Creating the right governance framework, ensuring organisational effectiveness, and attending to the demands of the business is a juggling act requiring exceptional skill and dexterity.

THIRD, the legal function must be proactive – integrated throughout the organisation as an enabler and supporter of the business – rather than reactive, compliance-oriented and bureaucratic.

One general counsel believes that people benefit from a "commercially oriented and service-focused legal community". He sets out to handle as much as possible in-house, operating "a fully formed and cost-effective practice with an intimate relationship with the business". He views the opposite scenario – where legal is "an administrative function that is reactive and highly reliant on external counsel" – as a missed opportunity.

In large, geographically dispersed companies, it is common for the legal function to be decentralised, with lawyers embedded in the business. There is a solid reporting line to the divisional business head (or into risk) and a dotted line to the general counsel. In the words of one general counsel, “the decentralised model empowers individuals and reduces gridlock in the decision-making process.” Others argue that “lawyers should always report to lawyers” to avoid them becoming susceptible to local interests. Either way, with lawyers embedded in the business the general counsel is himself far more likely to be immersed in the affairs of the executive committee.

In this respect, the US general counsel model could be considered more progressive than the UK model, where it is not uncommon for legal representatives to be relatively detached, even remote, from the business. US general counsel are likely – almost by definition – to be fully integrated into the business, play the role of trusted advisor and have a seat at the top table as a matter of course.

Building influence

79% of participants in our survey report directly to either the chairman or the CEO, with the balance reporting to the CFO or to another senior executive. Only 53% are formal members of the executive committee. 42% have, according to our estimation, a high level of influence at the “top table”: there is clearly great variation in the perceived standing of general counsel among corporates.

In thinking about the potential for building influence it is useful to ask whether the general counsel attends meetings of the board and the executive committee “as of right”. The really influential general counsel would expect to attend board meetings, but most importantly be a member of the executive committee.

For some, attendance at board meetings is only assured if they are taking the minutes. This more or less precludes participation in the meeting, but does at least afford them the opportunity to observe and gain a perspective on board-level discussion. It is perfectly normal for general counsel to attend board meetings when specific advice is sought, but the most influential general counsel will be present throughout the meeting, with the (deputy) company secretary taking minutes.

It has been said that the quickest way to find your way to the top table is to have a crisis. But in the absence of an emergency how can general counsel without a seat at the table or a close relationship with the CEO build their roles and raise their level of influence?

One place to start is by overcoming the common perception that the legal function is not commercially minded. This may mean integrating lawyers further into the business and being able to demonstrate positive impact. It may also mean enforcing cultural change within the organisation and “showing my team that it is okay to do things differently”, as one person put it.

Recruiting high quality people is absolutely essential, although this is not always easy: the legal and company secretariat functions tend to be fairly static and this can create succession problems. The more interaction lawyers have with the business, the more interesting the job becomes; in this virtuous circle the legal function is regarded more highly and it becomes easier to retain and develop good people.

In entrepreneurial, market-led businesses, lawyers can be perceived as a threat, and in such a culture the general counsel has to find ways to win trust and respect by making constructive contributions, at the same time playing a steadying role and protecting the business from pitfalls and excessive risk. Similarly, when the legal function is institutionally weak (i.e. not part of the management elite) it can be criticised as unnecessarily bureaucratic, an overhead, or even a hindrance – rather than an enabling force within the business. If the legal function is not viewed as a business partner, it will have an uphill struggle to earn respect and credibility.

Developing a broader suite of responsibilities and a greater international focus is also likely to help raise the general counsel's profile and influence. As the Appendix illustrates, there are numerous areas where the general counsel can bring value to the business beyond the traditional terrain of litigation management, compliance, governance and M&A. Highly influential general counsel often find themselves in charge of a range of projects, such as pensions policy, share schemes, senior-level succession and remuneration, board performance, corporate affairs, ethics and the company secretariat.

Should legal and company secretariat functions be merged or split?

70% of businesses participating in our survey have a merged legal function and company secretariat. However, in only 44% of cases does one person hold the dual role of general counsel and company secretary. Where the roles are split but the functions merged, legal sometimes reports into the secretariat and sometimes it is the reverse.

There is no clear consensus regarding best practice. Opinions are divided and there are persuasive arguments on both sides of the debate. The three issues at the core of this debate are efficiency, conflict of interest and influence.

Balancing workload and efficiency

Given the substantial overlap between functions, some argue that separating them is unwieldy and inefficient in practice. Only excellent communication between compatible individuals will avoid things “falling between the cracks”. By contrast, within a merged function legal matters can be dealt with effortlessly and seamlessly.

Others argue that in a sizeable organisation it is simply more practical for the roles to be split, given the sheer volume of work and the complexity of regulatory, legal and corporate governance issues at stake. Indeed, joint responsibility is onerous, stretching not only the senior lawyer but also his or her subordinates, who may have to make a rapid “step-up” in terms of accountability and workload.

Managing tension and conflict

At the centre of this debate is the question of whether there is an inherent conflict between the general counsel and company secretary roles. The roles are mostly compatible, but they can sometimes pull in different directions, although as one person pointed out, “people who feel conflicted do so more in theory than in practice.”

One person remarked that the board prefers him there in a dual role as general counsel and company secretary, as opposed to “wheeling in” external legal counsel to deal with problems issue by issue. There is clearly value for a board to have its corporate governance advisor and its legal counsel occupying a single chair, capable of balancing legal, commercial and governance issues within the context of the business.

By contrast, a strong case can be made that integrating the roles of general counsel and company secretary involves the same potential for conflict that has led to the separation of chairman and CEO. Indeed, there are parallels between the company secretary and the non-executive director in that both need to be connected to the business and able to offer informed support and advice, yet sufficiently detached not to be compromised on matters of principle.

One person argued that the company secretary should be “the creature of the chairman and the priest of corporate governance”, saying that the company secretary “needs the dignity of reporting to the chairman in order to perform his role effectively”. As “servant of the board”, a company secretary is inherently conflicted in his/her role as implementer of the Combined Code if his/her remuneration is decided by the executive.

Someone suggested that the company secretary has a “monitoring role” on the board, whereas the senior lawyer can exert more influence on the executive committee if he is not on the board. Another person went further by saying that independence is crucial for upholding integrity, therefore the general counsel cannot be part of either the executive committee or the board if the necessary checks and balances are to be properly observed.

Gaining influence through access

The head of a merged function is almost guaranteed to have access to the main decision-making forums, which ensures that the legal voice is heard at the top table. Few general counsel aspire to be board members, although most would expect to attend board meetings.

The senior legal figure who is neither the company secretary nor attends board meetings is at a disadvantage, since he/she is not present when much of the decision making takes place. Equally, it could be said that board level influence should be “as of right”, and that a general counsel should not rely on “doubling up” as company secretary in order to justify a place in the board room.

General counsel and company secretaries whose roles are separated are likely to have a narrower view of the business as result of this separation, and this in turn limits their ability to give objective commercial advice.

Whatever the arguments for and against merging the legal function and company secretariat, in reality the structure adopted by an organisation is just as likely to reflect the skills and personalities of its senior management as it is any conscious, philosophical approach to best practice.

The status quo does not necessarily reflect best practice for any given company. It is telling that one general counsel (who is also the company secretary) observed that he had created the role “in his own image” and that a restructuring would probably follow his departure – which demonstrates the difficulty inherent in finding a successor when the roles are combined. It is therefore usually the case that when the head of a combined legal/company secretariat function departs, the company has to look outside for a replacement – or split the role.

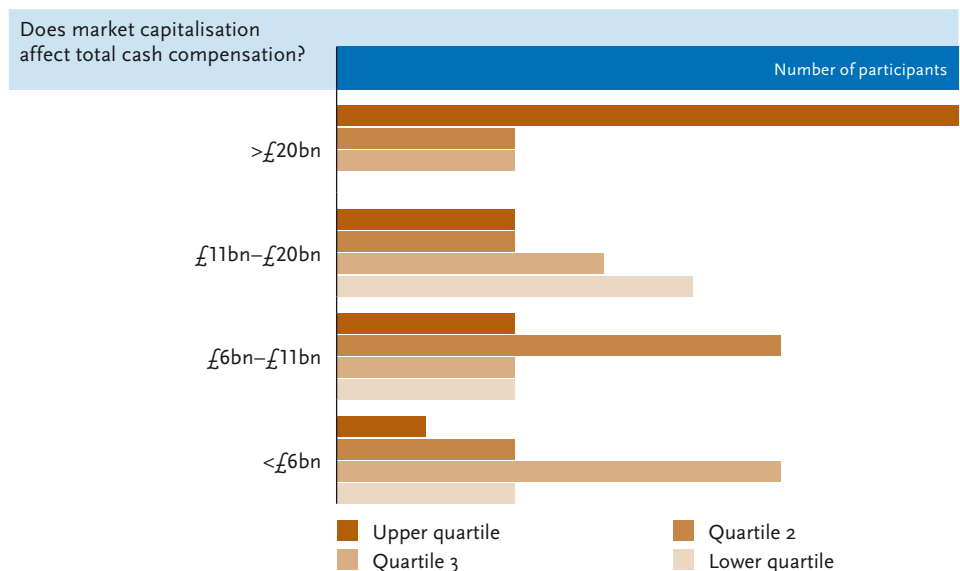
Remuneration

Although it is evident that both general counsel and company secretary roles are increasingly well paid, our survey uncovered substantial differences in remuneration levels, both in terms of base salary and bonus. We concentrated on expected rather than target remuneration, and the group surveyed were clearly conservative in their expectations. It is interesting to note that few general counsel paid much attention to LTIPs when discussing their remuneration.

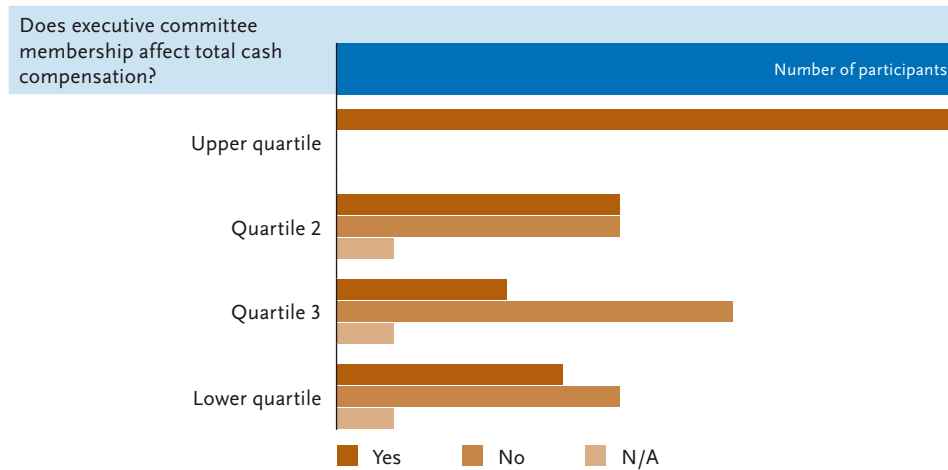
At the top end of the pay scale, packages compare favourably with the profit share of senior partners in magic circle law firms. However, this represents three times the total cash compensation available to those at the lower end of the FTSE 50 scale.

Remuneration by quartile	Number of participants	
	Base salary (£)	Base salary + expected bonus (£)
Upper decile	375,000	735,000
Upper quartile	328,000	570,000
Median	250,000	380,000
Lower quartile	183,000	260,000
Lower decile	147,000	212,000

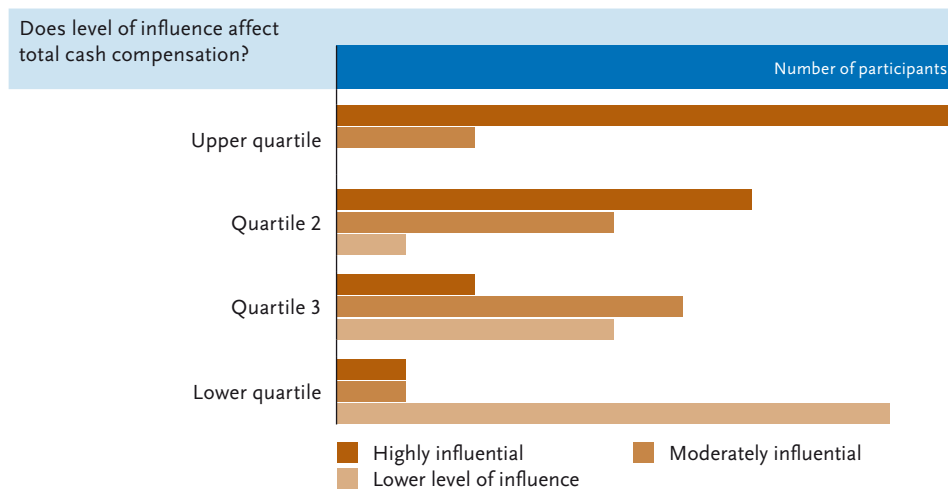
Market capitalisation clearly affects both base salary and total cash compensation, with the majority of people in the upper quartile coming from companies valued at over £20bn. That said, some of the higher earners work for smaller FTSE 50 companies (<£6bn).



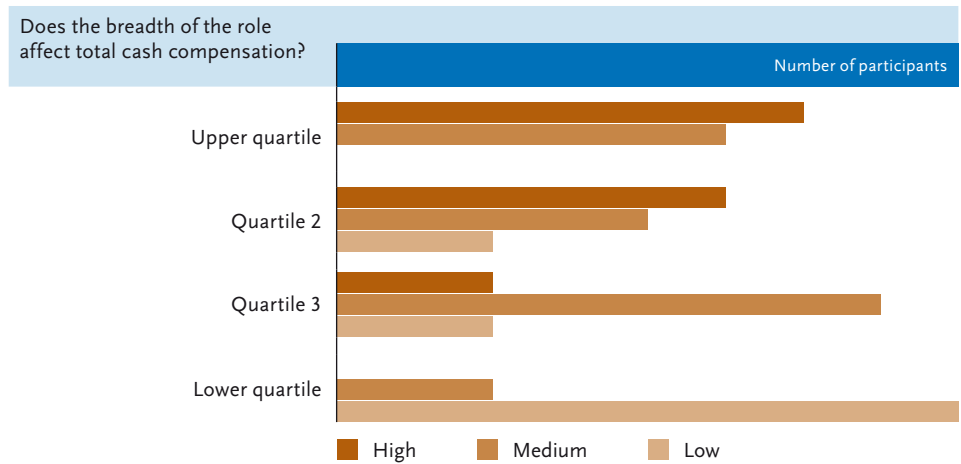
Upper quartile earners are always members of the executive committee, but on the other hand membership of the executive committee does not guarantee high earnings. A considerable number of executive committee members fall within the lower quartile for pay.



The correlation between total cash compensation and perceived level of influence is clearer than any other measure: so, the more influential the individual is within the organisation, the more that person is likely to earn.

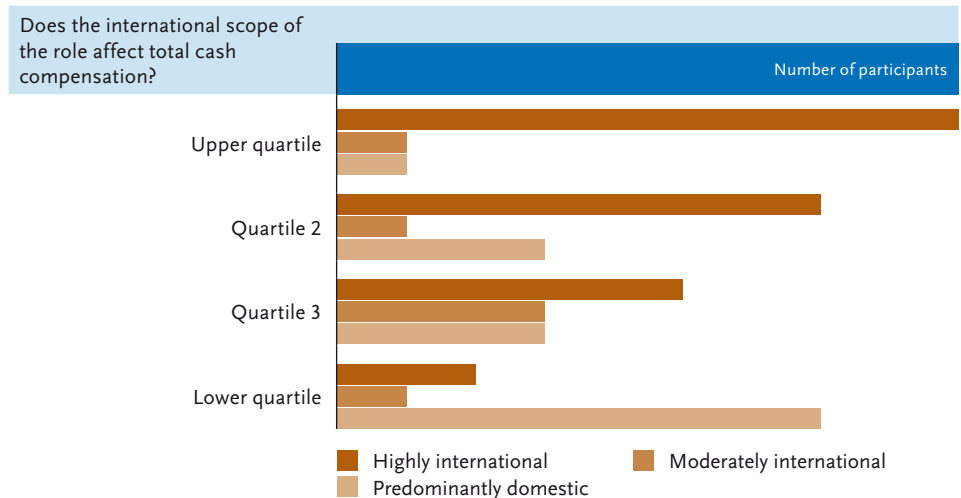


The breadth of the role affects total cash compensation. Those with narrower roles earn less, but a broader role is no guarantee of higher remuneration.



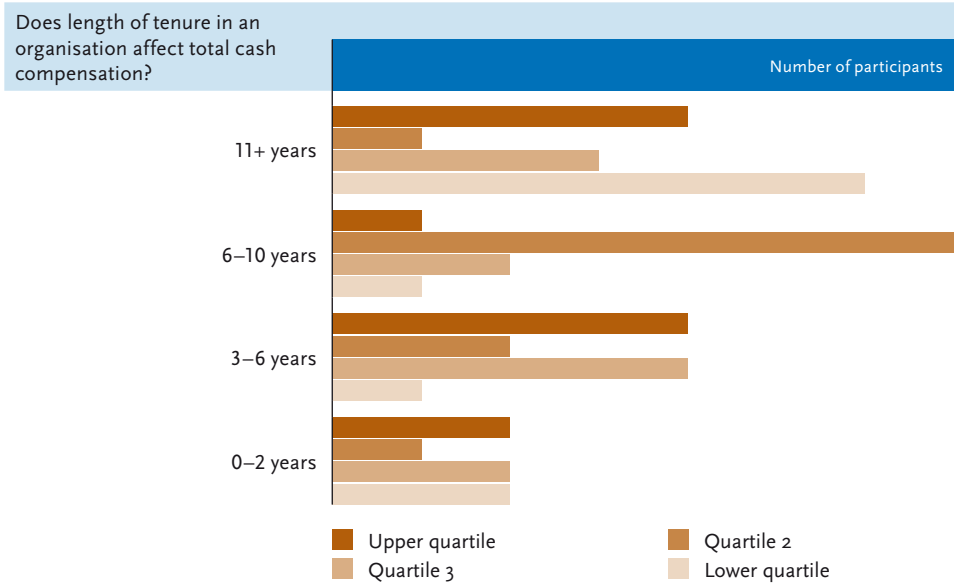
56% of participants manage teams of fewer than 100 people, with a team of around 20 fairly standard. Although there are clear exceptions, those with larger teams are on the whole better paid, although this is partly due to their having broader responsibilities that extend beyond the legal sphere.

The international scope of a role also affects total cash compensation. The vast majority of participants in the upper quartile are in highly international roles, whereas most lower quartile participants work for predominantly domestic companies.

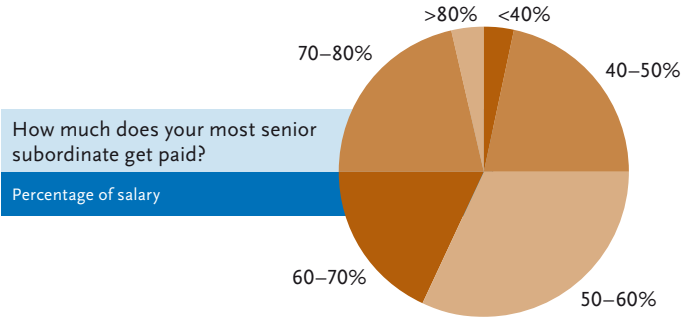


General counsel operating in highly regulated industries are not necessarily among the best paid; we were surprised to find there is no correlation between a regulatory environment and high levels of pay.

Almost half of the participants in our survey have been with the same (or a legacy) organisation for ten years or more, however there is no obvious correlation between length of tenure and total cash compensation.



The most senior subordinates tend to earn approximately 50% of the participant’s base salary. Genuine successors stepping up to the top role would rarely if ever have their remuneration doubled overnight, so it could be argued that if they are being paid much less than 70% of their boss, they are not real successors in the short term. It is therefore clear, just by looking at remuneration disparity within the legal/company secretariat functions, that many companies may be leaving themselves open to a succession dilemma.



Conclusion

The role of general counsel varies hugely between organizations, as does the level of influence at the top table. However, the trend is in one direction only: the role is evolving in such a way that the general counsel is becoming more and more central to the life of the company, with a steady burgeoning of responsibility, influence and pay.

General counsel remuneration is influenced by a combination of factors, including the complexity and international reach of the organisation; the size and scope of the function; level of influence at the top; and the degree to which the incumbent (and the function as a whole) is integrated into the business and has the confidence and trust of both the chairman and the chief executive.

Many, but not all, companies recognise the need for a confident, business-oriented senior lawyer to play a full part on the executive committee, as well as in the boardroom. Significant benefits accrue to those organizations that recognise the value of a highly capable general counsel. Those that don't are overlooking a potentially critical piece of their business arsenal.

CONTACT US

If you would like to talk to Spencer Stuart UK Legal Search Practice about any of the ideas discussed in this paper, please contact:

Lorna Parker

020 7298 3321

lparker@spencerstuart.com

Ali Rea

020 7298 3441

area@spencerstuart.com

Mark Stroyan

020 7298 3342

mstroyan@spencerstuart.com

Sue Mandelbaum

020 7298 3347

smandelbaum@spencerstuart.com

Appendix

FTSE 50 general counsel – potential areas of responsibility

Key responsibilities

- Legal
- Company secretariat
- Corporate governance
- Litigation management
- M&A activity
- Intellectual property (incl. patents and trademarks)
- Employment

Corporate governance

- Compliance
- Board performance
- Director induction programmes
- Regulatory affairs
- External advisors (incl. legal panels)

Financial & risk

- Risk management
- Internal audit
- Financial crime
- Whistle blowing procedures
- Insurance
- Investor relations

Corporate & business

- Corporate affairs
- Corporate social responsibility
- Distribution agreements

People and pay

- Senior-level remuneration
- Senior-level succession
- Share schemes
- Pensions policy
- Health & safety

Miscellaneous

- Security, theft & fire
- Property & facilities
- Procurement
- Museums & archives

WORLDWIDE OFFICES

Amsterdam

T 31 (0) 20.305.73.05
F 31 (0) 20.305.73.50

Atlanta

T 1.404.504.4400
F 1.404.504.4401

Barcelona

T 34.93.487.23.36
F 34.93.487.09.44

Beijing

T 86.10.6505.1031
F 86.10.6505.1032

Bogota

T 571.618.2488
F 571.618.2317

Boston

T 1.617.531.5731
F 1.617.531.5732

Brussels

T 32.2.732.26.25
F 32.2.732.19.39

Budapest

T 36.1.200.08.50
F 36.1.394.10.97

Buenos Aires

T 54.11.4313.2233
F 54.11.4313.2299

Chicago

T 1.312.822.0080
F 1.312.822.0116

Dallas

T 1.214.672.5200
F 1.214.672.5299

Frankfurt

T 49 (0) 69.61.09.27.0
F 49 (0) 69.61.09.27.50

Geneva

T 41.22.312.36.38
F 41.22.312.36.39

Hong Kong

T 852.2521.8373
F 852.2810.5246

Houston

T 1.713.225.1621
F 1.713.658.8336

Johannesburg

T 27 (0) 11 707.9460
F 27 (0) 11 463.3371

Leeds

T 44 (0) 1937.547700
F 44 (0) 1937.547710

London

T 44 (0) 20.7298.3333
F 44 (0) 20.7298.3388

Los Angeles

T 1.310.209.0610
F 1.310.209.0912

Madrid

T 34.91.745.85.00
F 34.91.561.42.75

Manchester

T 44 (0) 161.499.6700
F 44 (0) 161.499.6710

Melbourne

T 61.3.9654.2155
F 61.3.9654.4730

Mexico City

T 5255.5281.4050
F 5255.5281.4184

Miami

T 1.305.443.9911
F 1.305.443.2180

Milan

T 39.02.771251
F 39.02.782452

Minneapolis/St. Paul

T 1.612.313.2000
F 1.612.313.2001

Montreal

T 1.514.288.3377
F 1.514.288.4626

Mumbai

T 91.22.5637.2006
F 91.22.5637.2008

Munich

T 49 (0) 89.45.55.53.0
F 49 (0) 89.45.55.53.33

New York

T 1.212.336.0200
F 1.212.336.0296

Orange County

T 1.949.930.8000
F 1.949.930.8001

Paris

T 33 (0) 1.53.57.81.23
F 33 (0) 1.53.57.81.00

Philadelphia

T 1.215.814.1600
F 1.215.814.1681

Prague

T 420.221.411.341
F 420.222.233.087

Rome

T 39.06.802071
F 39.06.80207200

San Francisco

T 1.415.495.4141
F 1.415.495.7524

San Mateo

T 1.650.356.5500
F 1.650.356.5501

Santiago

T 56.2.940.2700
F 56.2.249.7883

Sao Paulo

T 55.11.3759.7700
F 55.11.3759.7736

Shanghai

T 86.21.6386.1177
F 86.21.5306.2718

Singapore

T 65.6586.1186
F 65.6438.3136

Stamford

T 1.203.324.6333
F 1.203.326.3737

Stockholm

T 46.8.534.801.50
F 46.8.534.801.69

Sydney

T 61.2.9247.4031
F 61.2.9251.3021

Tokyo

T 81.3.3238.8901
F 81.3.3238.8902

Toronto

T 1.416.361.0311
F 1.416.361.6118

Vienna

T 43.1.36.88.700.0
F 43.1.36.88.777

Warsaw

T 48.22.840.60.61
F 48.22.642.36.78

Washington, D.C.

T 1.202.639.8111
F 1.202.639.8222

Zurich

T 41.44.257.17.17
F 41.44.257.17.18

For copies, please contact:
Biddy Oppenheim on
+44 20 7298 3331 or
boppenheim@spencerstuart.com.

©2005 Spencer Stuart.
All rights reserved. For
information about copying,
distributing and displaying
this work, contact
permissions@spencerstuart.com.

Amsterdam
Atlanta
Barcelona
Beijing
Bogota
Boston
Brussels
Budapest
Buenos Aires
Chicago
Dallas
Frankfurt
Geneva
Hong Kong
Houston
Johannesburg
Leeds
London
Los Angeles
Madrid
Manchester
Melbourne
Mexico City
Miami
Milan
Minneapolis/St. Paul
Montreal
Munich
New York
Orange County
Paris
Philadelphia
Prague
Rome
San Francisco
San Mateo
Santiago
Sao Paulo
Shanghai
Singapore
Stamford
Stockholm
Sydney
Tokyo
Toronto
Vienna
Warsaw
Washington, D.C.
Zurich