Why Legal Operations Must Lean in on Governance and Create Governance Operations

Author:
Neil Barlow,
Senior Director of Global Sales,
Diligent

Over the last several years legal operations have been working to create their identity, solidify their profession and push for wider adoption. Now, we have crossed the chasm and legal operations is recognized as an important part of the legal department. Legal operations have primarily focused their time and attention on solving problems revolving around litigation, matter management, contracts and e-Discovery, however the time has come to usher in a new sub-section of legal operations called governance operations.

Good corporate governance is a competitive differentiator for organizations. Diligent Insights, the research arm of Diligent, conducted a study in 2019 that proved just that.[1] A composite measure of strong corporate governance was created and then applied to the S&P 500. Turns out companies with strong corporate governance (the top 20%) outperformed the bottom 20% by 15% in the most recent two-year period. We believe governance is a high value activity on a business, however governance is in need of technological advancements, process innovation and improved automation and I am nominating legal operations for the job.

At Diligent we believe that strong corporate governance helps organizations:

- Increase their company's long-term viability
- Enhance their business' value
- Pave the way for growth.

As a company, we are so confident in the fact that great corporate governance is a differentiator for businesses, that we have made it our mission to provide leaders with the technology, insights and processes to fuel good governance through our ecosystem of governance products spanning board management, governance operations and governance intelligence.

What started out as "just" a board portal has now evolved into a Governance Cloud offering doing for the office of the general counsel and the board what Salesforce.com did for sales and marketing.

1. https://diligent.com/modern-governance

Diligent

Through our suite of products, we're making it easier to surface the right information, to the right people, so they can ask better questions and make better decisions allowing leaders to better manage compliance, effectively mitigate risk and ensure sustainable growth.

For legal ops their main priority is enabling legal departments to better serve their clients more effectively by applying business and technical practices to the delivery of legal services.

For the purpose of today's discussion, I'm going to focus on two main "clients":

- The Board
- The office of the General Counsel.

While Good governance starts in the board room, in order for it to truly be a unique differentiator, it needs to extend beyond that and permeate throughout the organization.

So first let's focus on the Board.

Effective Boards Strengthen Performance & Investor Confidence

A company's corporate governance is important to investors since it shows a company's direction and business integrity. Good corporate governance helps companies build trust with investors and the community.

Well-structured, well-informed and diverse boards positively contribute to the performance of a business and strengthen investor confidence.

According to the Harvard Law School Forum on Corporate Governance[2], the role of the board of directors has evolved and they are under even more pressure to achieve a multitude of goals:

1. They want to improve the diversity of the board and the management team. While social justice has been the initial impetus, as of late, behind these efforts, companies have increasingly begun to regard inclusion and diversity as a source of competitive advantage, and specifically as a key enabler of growth."

- According to McKinsey, diverse companies are 33% more likely to have greater financial returns than their less-diverse industry peers.[3]
- Furthermore, according to BCG Henderson Institute companies with above-average diversity at the management level generate 19% higher innovation revenues than companies with below-average diversity.[4]

2. They are focused on sustainability issues affecting the company's long-term strategy. Investors, regulatory bodies, consumers, and employees are all increasingly demanding transparency on how an organization is approaching and measuring success as it relates to managing environmental, social, and governance (ESG) issues.

- In Q2 2020 60 organizations in the S&P 500 cited the term "ESG" during their earnings calls. Although this number is only 12% of the companies in the index, it reflects a 100% increase compared to the number of companies citing "ESG" in the previous quarter (30) and is the second highest overall number of companies going back at least four years.
- According to McKinsey, ESG-oriented investing has experienced a meteoric rise—global sustainable investment now tops $30 trillion.[5]

2. https://corpgov.law.harvard.edu/2020/02/09/strengthening-the-boards-effectiveness-in-2020-a-framework-for-board-evaluations/
3. https://www.mckinsey.com/business-functions/organization/our-insights/delivering-through-diversity
4. https://www.bcg.com/publications/2018/how-diverse-leadership-teams-boost-innovation
5. https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/five-ways-that-esg-creates-value
6. https://www.wsj.com/articles/u-k-requires-companies-to-report-on-climate-change-by-2025-11604964183

Diligent

Regulatory bodies requiring more disclosures from public companies on ESG is a question of when, not if. For example, the U.K. will require companies to report on the business impacts of climate change starting in 2025, becoming the first country to make the disclosures mandatory.[6] The Board must be challenging the companies' they oversee to answer several questions in order to better prepare them for their long-term future. .

- What story are we telling externally on ESG?
- Have we set compelling sustainability targets and goals that appeal to the marketplace?
- What reporting framework are we using, and why?
- What accountabilities have we set for ESG-related performance?

Ultimately, what gets measured gets managed.

3. They want to enhance risk oversight, all while fostering a company culture that supports long-term value creation. While it is management who is truly responsible for risk management, it is the board's responsibility to oversee management's process of identifying, monitoring and mitigating risks. If there is no established risk management framework, the board should direct management to develop a framework that includes the board's oversight duties.

- According to Deloitte, Risk oversight is a primary board responsibility, and in the evolving business and risk landscape directors need to develop and continuously improve practices to establish a well-defined and effective oversight function.[7]

4. They want to improve the self-assessment process to improve board alignment around key issues, reveal gaps in composition, provide fresh perspectives on the board's and management's functioning and strengthen the effectiveness of the board's procedures and practices.

- The board self-evaluation process has evolved from a "check-the-box" obligation into a highly effective tool to help boards of directors take a critical look at their capabilities and readiness to meet the growing expectations of investors and other corporate stakeholders.
- Only 56% of respondents to an HBR survey said their boards' performance is formally evaluated on a regular basis.[8] And only one-quarter of those—or 16% of the entire sample—have a plan to address the concerns raised by their assessments. Clearly, many boards lack data from which to draw conclusions about their success and processes for using the data they do have to improve. meet the growing expectations of investors and other corporate stakeholders.

So why should legal operations care? Well, all four of these board level goals boil down to two problems:

1. A lack of information.
2. A lack of process to improve visibility

Two areas where a legal operations mindset and approach can offer tremendous value.

Secondly let's focus on office of the General Counsel.

6. https://www.wsj.com/articles/u-k-requires-companies-to-report-on-climate-change-by-2025-11604964183.
7. https://deloitte.wsj.com/riskandcompliance/2018/10/02/risk-oversight-and-the-role-of-the-board/#:~:text=Risk%20oversight%20is%20a%20primary,2018%20Audit%20Committee%20Resource%20Guide.
8. https://hbr.org/2004/05/building-better-boards

Diligent

Embedding Governance Throughout the Organization

As I mentioned before, although good governance starts in the board room, in order for it to truly make a difference, it needs to extend beyond that and permeate throughout the organization.

The key to better corporate governance lies in the working relationships between the board and leadership, in the company culture, and in the diligence, integrity, and involvement of individual directors. Proactive governance will reduce the need for reactive compliance and risk practices.

Good governance permeating throughout a company's DNA is not something that happens overnight. In order to achieve this, you first must establish processes within the office of the general counsel to abide by four key principles:

- Regular collection of actionable information
- Processes to manage the accuracy and timeliness of that information
- Easy access to insights to collaborate and communicate on in a secure environment
- Ability to conduct peer benchmarking analysis timeliness of that information

As we see more and more fast growing starts up rise quickly and subsequently fall from grace due to a lack of good governance, a culture of compliance is increasingly considered to be an asset for organizations.

According to Deloitte, best-in-class organizations are shifting their perception of the governance and compliance function.[9] Previously seen as a cost-center, they are realizing that investment in the governance and compliance function, and software that helps accelerate its maturity, is associated with increased top and bottom lines in addition to lowered danger of organizational and reputational risk.

- Global compliance was perceived as a major issue for in-house lawyers, with 26% saying it was one of their biggest challenges, according to a research study commissioned by Deloitte Legal "Future Trends for Legal Services"[10]
- Data security and regulatory change and compliance are the two biggest risks to the future of their organizations based on research from "Risk in Focus 2020," a report that has sought to shed light on key business risks as identified by 528 Chief Audit Executives (CAEs)[11]

Good governance looks different for companies depending on their size and industry, however the role that good governance plays in compliance, risk management, business performance and sustainable growth is critical to all. For example, at a private company Corporate Governance is necessary for raising capital, being deal ready and setting the foundation for your exit value journey.

Organizations are looking to progress against three levels of maturity.

Setting a Foundation to Raise Capital

A track record of good governance practices ensures the right controls are in place to attract investment and confirm your valuation in order to build investor confidence and support ongoing sustainable growth.

Being Deal Ready

A commitment to a strong corporate governance and data management program helps businesses avoid costly compliance and risk missteps during due diligence. Be prepared by implementing a system to better manage governance, compliance and enterprise risk ahead of the deal.

Ensuring Success in Your Exit Value Journey

As companies file to go public their S1's all read the same. "We will incur increased costs as a result of operating as a public company, and our management will be required to devote substantial time to compliance with our public company responsibilities and corporate governance practices."

9. https://www2.deloitte.com/content/dam/Deloitte/us/Documents/financial-services/us-fsi-compliance-to-power-performance.pdf
10. https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Legal/dttl-legal-future-trends-for-legal-services.pdf
11. https://iia.no/risk-in-focus-2020-hot-topics-for-internal-auditors/

Diligent

Good governance advances your company's long-term viability, enhances the business' value and paves the way for future growth. Organizations preparing for an IPO must begin to act like a public company, building confidence and verifying compliance even while private in order to prepare for life as a public company before it officially starts.

For example, at a public company Corporate Governance is the foundation for financial integrity, investor confidence and sustainable performance.

Effective Boards Strengthen Performance & Investor Confidence

Well-structured and well-informed boards positively contribute to the performance of a business. This strengthens investor confidence and, ultimately, increases investor capital that businesses need to grow, compete, and thrive

Investing in a Culture of Compliance

A culture of compliance is increasingly considered to be an asset for organizations where investment in the function is associated with increased top and bottom lines, as well as lowered danger of reputational and other risks. It is no longer just an overhead cost driven by regulatory demand.

Apply a Predictive and Proactive Approach to GRC

Governance, risk and compliance are becoming more complex, requiring better management and a focus toward the proactive and the predictive in order to be a strategic advisor and a value add to the organization.

But why should legal operations care?

Governance is a high value activity that will drive a meaningful impact:

Improving the way in which the board receives information to make key decisions is directly correlated with improving a company's bottom line.

While this is a high value activity it also comes with a high degree of risk because it impacts key decision makers across an organization. However, working with a company, like Diligent, that has proven success of innovating GRC within Fortune 500 companies, can help minimize that perceived risk. I wouldn't be surprised to hear Diligent being described as a most valuable resource or secret weapon due to our 98.5% retention rate (unprecedented in SaaS) and massive scale as last month alone we had over 1 million directors log into our application

Your company's corporate record is ripe for innovation:

it's time to bring your company's entity and subsidiary management into the 21st century. Managing important company records in excel isn't going to cut it anymore. As legal operations teams, there is no one better suited to establish processes to build a single source of truth for your corporate record. And believe me, your whole company will thank you because multiple functions across the business regularly need access to entity information...

- Tax needs entity ownership information to build organizational structure
- Finance needs entity and director information to manage signing authority
- Compliance, Tax and Legal need access to inter-company agreements related to multiple entities to help with transfer pricing
- Treasury wants to track bank account information tied to each entity
- Litigation needs access to past names
- HR and Legal must be in sync when directors leave the organization in order to make sure there's a process in place to appoint new ones to ensure good standing

Invest in the right technology that enables you to do more with less:

Governance and compliance teams are being asked to increase output without increasing headcount so legal operations attention is needed for improved process automation.

Ultimately, every technology investment boils down to four questions:

Can it help us grow bigger and faster?

- Diligent helps you enter new jurisdictions to support organic growth into new markets.
- Diligent helps you more effectively act on M&A opportunities while being able to efficiently manage the due diligence process
- Diligent helps you enter new jurisdictions to support organic growth into new markets.
- Diligent helps you solidify your ESG standards and according to research by the Harvard Law School of Corporate Governance there's a link between ESG—Environment, Social, and Governance—and financial performance[12]
- Diligent helps you strengthen investor confidence

Does it help us save money?

- Diligent streamlines the process of managing business entities and their regulatory needs
- Diligent helps you be audit ready easier and faster
- Diligent helps you standardize existing manual processes
- Diligent helps your organization breakdown silos between functions to inspire collaboration and drive better cross functional alignment and operational efficiency
- Diligent helps improve output without increasing headcount by automating repetitive governance tasks

Is it allowing us to stay compliant to better manage risk?

- Diligent helps you meet more stringent regulatory, compliance, policy and filing requirements to prevent legal and compliance risks and financial penalties
- Diligent helps proactively surface potential harmful opportunities for activist investors to pressure your organization

Is it accelerating remote productivity?

Especially since according to Corporate Counsel 77% of CLOs expect their remote or flexible working arrangements to become permanent for Legal Department staff.[13]

- Diligent helps your organization breakdown silos between functions to collaborate in a secure governance ecosystem
- Diligent helps you migrate your physical documents and minute books into a secure digital environment
- Diligent helps legal teams improve self-service

12. https://corpgov.law.harvard.edu/2020/01/14/esg-matters/
13. https://www.law.com/corpcounsel/2020/11/17/where-are-legal-departments-cutting-costs-during-this-pandemic/?kw=Where%20Are%20Legal%20Departments%20Cutting%20Costs%20During%20This%20Pandemic?&utm_source=email&utm_medium=enl&utm_campaign=dailyalert&utm_content=20201118&utm_term=cc&slreturn=20201108174723

Diligent

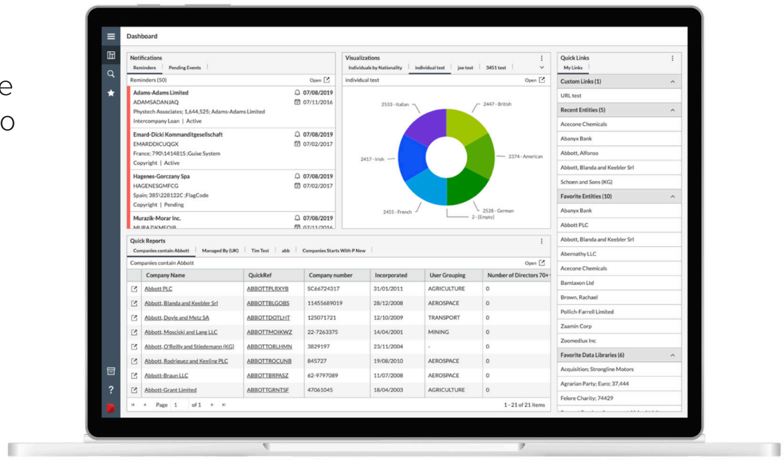
About Diligent

Good governance is a competitive advantage, but implementing it doesn't need to be difficult.

The right governance technology empowers your organization to act strategically while maintaining compliance, mitigating risk and driving efficiency.

- Companies with better board and governance operations report **stronger financial performance** than organizations without those processes.
- New challenges and opportunities arise every day. Organizations with strong governance operations in place can **adapt to the evolving landscape** – faster and with more agility than their competitors.
- Modern governance empowers leaders with the **technology, insights and processes** required to fuel good governance.

At Diligent, we produce the modern governance tools to help you maintain security, ensure visibility and act with agility in order to mitigate risk and seize new opportunities. Our platforms facilitate seamless board and committee management, secure collaboration, C-suite efficiency and improved compliance with access to industry trends and insights that help you make data-driven decisions in real time. With the largest global network of corporate directors and executives, Diligent is relied on by more than 19,000 organizations and nearly 700,000 leaders in over 90 countries. With award-winning customer service across the globe, Diligent serves more than 50% of the Fortune 1000, 70% of the FTSE 100 and 65% of the ASX.



Ready to see Diligent in action? Schedule a demo today.

Contact Us | Info@diligent.com | +1 877 434 5443 | diligent.com