

Recommended Read: The Rise of Risk Management in Financial Institutions and a Potential Unintended Consequence – The Diminution of the Legal Function and the Role of Legal Departments

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Tom Baxter of Sullivan & Cromwell LLP, and formerly the General Counsel of the Federal Reserve Bank of New York, has written an important article titled “The Rise of Risk Management in Financial Institutions and a Potential Unintended Consequence – The Diminution of the Legal Function,” recently published by the ABA Business Law Section in *Business Law Today*, available [here](#). In the article, Tom lays out the reasons why the rise of risk management and the “three lines of defense” risk framework has led, unintentionally, to the diminution of the in-house legal function in banking organizations.

In my view, every lawyer who works in and around the financial sector should read this article because it raises important questions about the role of in-house lawyers in the banking sector and, hence, about the role of the rule of law in banking supervision. The independence of and the role of the legal department within regulated banking organizations has come under pressure in recent years. This pressure has been exacerbated by a clash of the professional silos among legal, risk and compliance, with extra weight given to it by the supervisors’ mistrust of lawyers and the in-house legal function. It goes far beyond the business-as-usual healthy tension over legal costs.

Another side effect has been the relative paucity of resources, including investment in technology, faced by in-house legal departments in banking organizations. The result is a push, by some, to divert in-house lawyers and the legal function away from a trusted advisor role into a smaller role. By sharp contrast, the trend outside of the banking sector is exactly the opposite—that is, an increased trusted advisor and strategic role for the General Counsel and the legal department in large complex organizations. It is time for risk managers, supervisors and the legal profession to work together to think about how to remedy this situation which, in the long term, is not healthy for either the legal function or the risk function.

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If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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