



# ***RISKING IT ALL?***

► The Business Case for Outside General Counsel

*Many family-owned and closely held businesses have sophisticated legal needs, but are not yet of a size or level necessitating a dedicated in-house lawyer. With so much at stake, how should you manage your legal work? The outside general counsel (GC) model can drive significant value for family-owned and closely held businesses.*

#### » Why wouldn't you hire an outside GC?

There are a number of reasons that small- and medium-sized businesses might be reluctant to consider the outside GC model. Perhaps they don't understand the value to their company or they don't want to give one lawyer that label. Maybe they're concerned about costs or they believe that they are effectively managing legal issues by having a non-lawyer employee deal with issues on a reactive basis. Or maybe they're used to operating without a legal resource and business seems fine. Whether the company is compliant and effectively managing their business from a legal perspective is another question. Given the increasing complexity of the business environment, current pace of regulatory changes, and legal and compliance issues that spark internal, and possibly public relations disasters (*e.g.*, consumer privacy issues; data security breaches; allegations of sexual harassment), companies should consider a more proactive approach to addressing their legal needs.

An outside GC often has a specialized legal practice that operates at the intersection of business and legal matters. Key to the effectiveness of the outside GC is a unique understanding of the company's business and participation with corporate leaders in the decision-making process. This level of understanding and access allows the outside GC to identify and address potential legal or compliance issues *before* they become problems. An effective outside GC is a problem-solver and respected advisor who provides timely, practical and thorough legal advice, and who is adept at communicating this advice in an understandable manner to company leaders. An outside GC will have knowledge and experience covering a broad range of legal issues experienced by the company. An outside GC will maintain a ready roster of other lawyers that can be called upon across legal practice areas when an issue demands a more in-depth analysis.

#### » So how do companies without GCs operate?

Addressing legal matters only after they become problems can impact a company's ability to either reduce liability or create business opportunities. Reacting to legal issues as they arise is inefficient, will cost more in the long-run and can disrupt business. Establishing and maintaining an outside GC relationship will free up senior leaders to devote more time to the business, and the board of directors can take greater comfort that the company is proactively addressing its legal risks and opportunities.

Similarly, when companies designate a particular officer as responsible for legal issues, it increases the likelihood that either the company's legal matters will not get full attention or that the added responsibility could distract that officer from other critical duties. It's also dangerous. If that officer is not trained to look for legal risks, your company could face extensive compliance issues, or even miss advantageous opportunities for your business.

Contrary to what you might think, using a variety of lawyers can also be detrimental to a closely held business. No one lawyer will have a complete view of a company's legal and compliance risks and opportunities. It's important to consider an outside GC as an extension of your management team and your one main point of contact who can handle any issue from employment to real estate personally, or by supervising the work of another lawyer.

## » The benefits of having an outside GC

- The company has a single point of contact for all of its legal needs.
- Having one lawyer with a working knowledge of the company and all of its legal issues will allow for more targeted advice that takes into account the company's long term goals and objectives, rather focusing only on legal issues when they arise.
- More cost effective than hiring a full-time employee. The company uses the legal resource as needed and the company decides when and how it wants the participation of its outside GC.
- This is not an all or nothing proposition – the company can phase in the lawyer's involvement and prioritize particular functions (*e.g.*, regulatory issues; contracts) where immediate focused legal attention can best benefit the company. This will have the added benefit of allowing the company to get to know the lawyer, and vice-versa, to determine fit.
- Committing to an ongoing relationship will provide the company with an opportunity to ask for creative billing arrangements.
- If you feel your company will eventually need a full-time GC, establishing an outside GC relationship can be an effective first step in that process. Having institutional history residing with the outside GC can ease the transition and onboarding of a GC when that time comes.

## » What should you look for in an outside GC?

Creating an outside GC relationship can be transformative to addressing a company's legal needs. A lawyer with previous in-house counsel experience is often best-suited to deal with a broad array of day-to-day issues faced by companies and all levels of management. A lawyer with this experience can triage a wide variety of questions, prioritize those questions that can be answered quickly, and identify issues that demand more attention. In addition, finding a lawyer who is part of a large firm and who is heavily connected to the business and legal community will enable them to call upon other resources and legal experience when appropriate. Finally, and probably most important, find a lawyer whose demeanor, communication style and legal approach compliment the personality of the company and its leaders.



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