

## Legal Risk Management Tip June 2015

### THE IMPORTANCE OF OUTSOURCED GENERAL COUNSEL

One important decision in the lifecycle of a growing company is when to hire its first in-house counsel. Frequently, this issue arises at a time in the evolution of an organization before there is a need for a full-time employee in this role or room in the corporate budget for a highly compensated general counsel. Other factors may drive the decision of whether to hire an internal attorney including costs, how the function will integrate with the current management and whether there is enough work for a full time employee. When to devote resources to this role is equally important as how to devote those resources.

Before there is a clear need for a full time, in-house attorney, it is common for a company to “staff” the legal function by using a combination of its Chief Financial Officer (“CFO”) and a Chief Operating Officer (“COO”) and then retain outside counsel for discrete or technical matters, such as for contract negotiations, business litigation or patent work. While possibly cost efficient in the short term, this type of arrangement may result in delegated responsibilities that fall outside of the professional’s traditional roles and areas of expertise which can lead to operational inefficiencies, increased expenses and potential liability, and unanticipated risks as a result of the delegee not having a particular trained skillset.

Recently, a new approach has emerged whereby companies with regular and recurring legal needs utilize outside counsel to serve the role of “Outsourced” General Counsel. Although it may sound like an oxymoron, companies embracing this option thoughtfully and tactically enjoy the benefits of having dedicated senior counsel, reduced overall legal expenditures and a valuable strategic partner with deep and comprehensive knowledge of the organization to provide sound legal guidance.

This month’s Legal Tip explains the role of the Outsourced General Counsel and offers some important considerations for businesses to take into account when retaining counsel to serve this role.

#### **Outsourced General Counsel Defined**

The Outsourced General Counsel position can take a variety of forms, but, at its core, it is a role within the legal function of a company where a dedicated external attorney resource handles and manages the routine legal needs of a business on a part-time basis. Examples of the types of matters an Outsourced General Counsel might typically perform include contract drafting and negotiation, customer and vendor agreements, human resources issues and documentation, Board of Directors matters and corporate governance to name a few.

#### **Why Outsourced General Counsel?**

This is an excellent question. The benefits of a high quality Outsourced General Counsel relationship are numerous.

### Spend Company Funds More Efficiently

The Outsourced General Counsel is a cost-effective way to obtain legal services if the need for a full-time legal employee is not present. Most small and medium business (and some larger companies) do not have the need for a full-time attorney and/or do not have room in the budget to pay the salary of an experienced internal General Counsel. Before a company has the volume of legal work to justify incurring the costs of a C-level General Counsel, retaining that same experience through an Outsourced General Counsel relationship should allow the company to receive the comprehensive legal advice but a much lower cost than the salary of an equally qualified full-time professional.

### Develop a Valuable Asset to the Business

By working with a dedicated Outsourced General Counsel, a company can develop an invaluable strategic partnership, where the attorney's knowledge of the company deepens with each new task. It is difficult to think of a better way for an attorney to understand a business than to directly experience the volume of day-to-day legal issues that arise; arranging for Outsourced General Counsel to be on-site only accelerates this process. Having an Outsourced General Counsel serve as the first stop for all corporate legal matters allows an attorney to transcend the traditional legal role and provides the following benefits not normally associated with a standard attorney engagement:

- Allows an attorney to gain a deep and broad knowledge of the business, its operations and corporate history. Over time, the “institutional memory” developed will pay off, especially if a business operates in a high turnover industry;
- With enhanced knowledge of the business, the Outsourced General Counsel will be able to counsel more efficiently, and provide effective advice that not only considers applicable law, but also factors in the real life impact of implementing legal advice; and
- Enables the Outsourced General Counsel to proactively identify and solve problems rather than respond after issues arise.

### Allow Non-lawyers to Focus on Business Matters

Cultivating an Outsourced General Counsel arrangement should alleviate the operating burdens placed on non-lawyer employees performing or managing legal functions. Before hiring a full-time internal attorney, non-attorney employees – perhaps the CFO, CCO, Executive Vice President or even the CEO -are often asked or expected to review contracts, assist with corporate transactions, or handle sensitive human resources issues. The Outsourced General Counsel can relieve senior managers of these tasks while simultaneously growing into a de factor member of senior management. This can be especially important for organizations with a heavy government or regulatory compliance requirements.

### Organize the Company's Legal Function

Prior to hiring internal counsel, it is common for a company to have variety law firms handling numerous, unrelated legal matters. It is also common for no one employee to have knowledge of all of those legal matters. This type of *ad hoc* management and compartmentalization of legal work leads to operational inefficiencies, especially if more than one company employee interfaces with outside counsel.

The Outsourced General Counsel can serve as a single point of contact for routine and even major legal matters, resulting in enhanced coordination, smart prioritization and improved comprehensive management of a company's legal function and relationships with other outside counsel.

Of course, your Outsourced General Counsel cannot be a specialist capable of handling every single legal need of a business and is not intended to supplant all of a company's legal relationships; however, because an Outsourced General Counsel understands the business of law, he or she should be able to draw on experience to effectively and efficiently manage the other attorneys serving the company, which could include other attorneys within the Outsourced General Counsel's own law firm (dependent upon structure).

### **Attributes of Effective Outsourced General Counsel**

Should your business decide to engage Outsourced General Counsel, here is what to look for when selecting the attorney (or group of attorneys) to serve that important role:

- **Prior General Counsel or Internal Counsel Experience:** There is no better way to gain an appreciation for the intersection of a company's legal needs and business objectives - and the tensions that may arise between the two – than first-hand experience. A range of substantial in-house experience at companies ranging from start-ups to established, complex entities is ideal.
- **An Attorney with Management and Business Experience:** The ability to appreciate a company's legal needs, operational goals, and observe the bottom line are critical to the success of Outsourced General Counsel.
- **Ability to Interact with Senior Management and the Board:** A successful Outsourced General Counsel should have a skill set that allows him or her to operate at a senior level in an organization. Look for an attorney who has interacted extensively with C-Suite managers and Boards of Directors, and counselled those individuals on material legal issues.

### **Conclusion**

Structuring an Outsourced General Counsel relationship that is suited to your organization's particular business needs can satisfy operational and economic goals. In addition to serving as an effective and efficient solution to strengthen a company's legal operations, this type of arrangement will allow a business to provide stability, reduce potential legal risk and satisfy strategic objectives.

For more information on these and other considerations, please contact us at (619) 298-2880 or at [info@jackolg.com](mailto:info@jackolg.com).

**Author: Robert Conca, Esq., Partner; Editor: Michelle L. Jacko, Esq., Managing Partner, Jacko Law Group, PC. JLG works extensively with investment advisers, broker-dealers, investment companies, hedge funds, banks and corporate clients on securities and corporate counsel matters.**

*This article is for information purposes and does not contain or convey legal advice. The information herein should not be relied upon in regard to any particular facts or circumstances without first consulting with a lawyer.*