



# Guide to ACC Value Challenge in Europe

How to Get Better Value From  
External and Internal Resources



# TABLE OF CONTENTS

**A. HOW TO USE THIS RESOURCE ..... 5**  
**B. GLOSSARY OF TERMS ..... 6**  
**C. ACKNOWLEDGMENTS..... 7**

## **PART I: LAY THE FOUNDATION FOR SUCCESS**

**I. Principles of the Value-Driven Legal Function ..... 8**

- I A. What is the Value Challenge? .....8
- I B. Anecdotes: How inside and outside counsel in Europe are delivering more value .....9
- I C. Why is this important now?..... 10
- I D. Who wins? ..... 11
- I E. Your law department’s journey to higher value ..... 12

**2. What’s Different About the Value Challenge in Europe? ..... 13**

- 2 A. What do we mean by “Europe”? ..... 13
- 2 B. Professional development and focus of in-house counsel in Europe ..... 14
- 2 C. Privilege restrictions ..... 16
- 2 D. Key differences in Europe; market practices and cultural mores ..... 16

**3. Define Your Objectives and Strategy for Higher Value ..... 19**

- 3 A. Clarify what you seek to accomplish and why ..... 20
- 3 B. Gather input from your business clients ..... 21
- 3 C. Identify changes required for your in-house team ..... 21
- 3 D. CASE EXAMPLE ..... 21
- 3 E. Identify changes required for your external providers..... 23
- 3 F. Tools, templates and resources..... 25

## **PART II: VALUE LEVERS IN EUROPE**

**4. Value Levers in Europe: Communications ..... 27**

- 4 A. Before you act, take time to meet and talk ..... 27
- 4 B. Develop your communications plan ..... 27
- 4 C. Cross-border communication to help deliver value..... 28
- 4 D. Guidelines for effective use of email..... 29
- 4 E. Guidelines for effective teleconferences ..... 31
- 4 F. CASE EXAMPLE..... 32
- 4 G. Tools, templates and resources ..... 33

<b>5. Value Levers in Europe: Measurement and Metrics .....</b>	<b>35</b>
5 A. Clarify current spending – internal and external.....	35
5 B. CASE EXAMPLE.....	36
5 C. Determine what will be measured and how.....	37
5 D. Individual in-house counsel performance metrics.....	38
5 E. Outside counsel performance metrics .....	39
5 F. CASE EXAMPLE.....	41
5 G. Tools, templates and resources .....	42
<b>6. Value Levers in Europe: Effective Service Provider Relationships .....</b>	<b>44</b>
6 A. Optimize available resources: effective approaches to manage external providers.....	44
6 B. Diagnostic tool: decide which resource should handle a matter.....	44
6 C. Basic practices in managing higher-value outside counsel relationships .....	46
6 D. Prepare and communicate outside counsel guidelines.....	50
6 E. CASE EXAMPLE.....	51
6 F. Tools, tips and resources .....	53
<b>7. Value Levers in Europe: Effective Fee Approaches – Value-based Fees and Incentives .....</b>	<b>54</b>
7 A. Set the stage for effective fee arrangements with your providers.....	54
7 B. Define and scope: clarifying roles, requirements and desired outcomes.....	55
7 C. Types of value-based fees .....	59
7 D. Other approaches to reduce fees .....	61
7 E. CASE EXAMPLE.....	61
7 F. Tools, templates and resources.....	63
<b>8. Value Levers in Europe: Advancing Your Journey to Higher Value .....</b>	<b>68</b>
8 A. Process improvement.....	70
8 B. CASE EXAMPLE.....	70
8 C. Project management .....	72
8 D. Knowledge and data management.....	76
8 E. CASE EXAMPLE.....	76
8 F. Tools, templates and resources.....	78

## About Association of Corporate Counsel

*The Association of Corporate Counsel (ACC) is a global bar association that promotes the common professional and business interests of in-house counsel who work for corporations, associations and other private-sector organizations through information, education, networking opportunities and advocacy initiatives.*

*ACC connects its members to each other and to the people and resources necessary for their personal and professional growth.*

## About Association of Corporate Counsel – Europe Chapter

*ACC Europe is one of ACC's many chapters worldwide. ACC Europe offers a unique pan-regional perspective on issues such as cross-border transactions, conflicts of laws, and civil and common law comparisons to help members address the needs of companies doing business in Europe. ACC Europe provides extensive networking opportunities to further the understanding of international legal practice and promote cross-border interaction.*

*By in-house counsel, for in-house counsel.®*

*For more information, visit [www.acc.com](http://www.acc.com), [www.acce.com](http://www.acce.com) and follow ACC on Twitter at <http://twitter.com/ACCinhouse>.*

## A. HOW TO USE THIS RESOURCE

We have tried to make this resource user-friendly, whether you are just beginning to look at value in the in-house legal function, or you've already made progress in delivering value.

It is unlikely that any in-house counsel in Europe has the time to read this resource beginning to end. That's why we've produced it as an interactive e-publication, so that it is easy to navigate to the sections of most interest to you today.

While each chapter provides basic guidelines and a few more advanced approaches, some chapters may be more useful to those just starting out on the ACC Value Challenge, and other chapters may provide greater benefit to those who are already leading initiatives to increase value from external or internal resources. The case examples provide a range of beginning to advanced steps as well.

We suggest that you start with sections that are of particular interest.

- Chapters suggested for ACC Value Challenge **novices**: 1, 2, 3, 4, 5
- Chapters suggested for **intermediate** level practitioners: 4, 5, 6, 7
- Chapters for **experienced** value practitioners: 6, 7, 8

If you are particularly interested in what others are doing to drive value in Europe, you can go right to the case examples.

- H. J. Heinz, *Alignment through VGSM: Vision Goals Strategy Measures*, p. 21
- Wragge & Co, *Better communication on legal issues affecting businesses*, p. 32
- The Coca-Cola Company, *Taking Accountability for the Legal Budget*, p. 36
- Eversheds, *Teaching corporate counsel Key Performance Indicator principles*, p. 41
- Paul Hastings Europe, *Tailoring value-added services to clients' specific needs*, p. 51
- Saipem, *Lowering costs through structural change to reduce litigation*, p. 61
- BT Global Services, *Best sourcing – Best Value*, p. 70
- Baker & McKenzie, *Service and knowledge management to reduce costs and improve client satisfaction*, p. 76

Please let us know what you find most helpful and what is missing, so that we can further edit and update this resource. Contact [ACCValueChallenge@acc.com](mailto:ACCValueChallenge@acc.com).

## B. GLOSSARY OF TERMS

**Corporate law department** – a descriptor for the legal function within a company, organization, institution.

**Cycle time** – the amount of time between start and completion of a process or activity.

**Ebilling** – the practice by which invoices or bills are electronically delivered to clients, enabling the opportunity to analyze spending and better track projects to agreed budgets and billing parameters.

**External providers** – outside experts whose expertise matches an identified need, such as: law firms, investigative firms, ediscovery and litigation support firms, compliance support and training firms, etc.

**External spend** – legal costs incurred by the company or organization for work with external providers.

**Inside counsel** – synonym of in-house lawyer, in-house counsel.

**Internal spend** – legal costs incurred inside the company (e.g., in-house legal staff, technology, overhead, etc.).

**Knowledge management** – strategies and processes designed to identify, capture, structure, leverage and share an organization's intellectual assets (e.g., information, documents, experience, precedents, etc.) with the goal of higher performance, productivity and competitiveness.

**KPI** – Key Performance Indicator, used by an organization to measure and evaluate its success or the success of a particular activity.

**Law department** – the name generally used in this report for the legal services function in the company or organization (not in the law firm).

**Legal professional privilege** – the protection stipulated in law from disclosure of all communications between a professional legal adviser and his/her clients without the express permission of the client.

**Metrics** – any type of measurement used to gauge a component of a company's performance, such as return on investment (ROI), external spend, cycle times, etc.

**Outside counsel** – a lawyer or law firm hired to provide legal advice to an individual or organization.

**Partnering** – a process of collaborative teamwork between client and provider to achieve measurable results through agreements and productive working relationships.

**Process improvement** – a strategic approach to improving products, services, and processes by understanding the root causes behind process inefficiencies.

**Project management** – the discipline of planning, organizing, securing, managing, leading, reporting and controlling resources to achieve specific goals.

**Reengineering** – the reorganization of the operations (of an organization) to improve efficiency.

**Reporting** – the collection of performance information to support higher awareness and better decision-making.

## C. ACKNOWLEDGEMENTS

ACC is grateful to many inside and external counsel who provided helpful input for this report. The following individuals, all of whom have extensive experience with corporate legal services in the greater Europe region, deserve special thanks. They took time to share their insights, provide useful studies and other information, and suggest best practices and tips for this report.

**Alex Bellinger**, *Head of Communications*, Nabarro (London)

**Shelley Boyes**, *Director, Marketing and Communications*, World Law Group (Toronto)

**Bruno Cova**, *Co-Chair*, Paul Hastings LLP (Milan)

**Nino Cusimano**, *General Counsel*, Telecom Italia (Rome)

**Stuart Dodds**, *Director of Global Pricing*, Baker & McKenzie (Chicago)

**Dan Fitz**, *General Counsel*, British Telecom (London)

**Chris Fowler**, *General Counsel*, BT Global Services UK Legal Team (London)

**Pietro Galizzi**, *General Counsel & Senior Vice President*, Saipem (Milan)

**Tim Glassett**, *former General Counsel*, Hilton Hotels (Los Angeles area)

**David Gribble**, *Chief Counsel*, BT Global Services UK Legal Team (London)

**Will Harpur**, *Corporate Communications Manager*, Wragge & Co LLP (London)

**Bryn Hughes**, *Lexis Nexis Martindale-Hubbell* (London)

**Massimo Mantovani**, *General Counsel and EVP*, Eni (Rome)

**Janice More**, *Vice President - Europe General Counsel*, H. J. Heinz Company Limited (London)

**Sandra Mori**, *General Counsel - Europe Group*, The Coca-Cola Company (Milan)

**Michael J. O'Neill**, *General Counsel*, CHC (Vancouver)

**Laurie Robertson**, *Global Director of BD & Marketing*, Baker & McKenzie (New York)

**Helena Samaha**, *General Counsel*, Orbit Showtime Networks (Dubai)

**Paul Smith**, *Partner*, Eversheds (Leeds)

**Dirk Tirez**, *General Counsel & Corporate Secretary*, Belgian Post (Brussels)

**Stuart Young**, *Partner*, Wragge and Co LLP (London)

Much of the information in this report is excerpted (as noted) from published ACC resources that are available on the ACC website. In some cases, the text has been adapted for the European practitioner.

# PART I: LAY THE FOUNDATION FOR SUCCESS

## Chapter I. Principles of the Value-Driven Legal Function

### I A. What is the Value Challenge?

The ACC Value Challenge began in 2008 as an initiative to drive law firms to improve their value and reduce costs. In North America, ACC has held many gatherings of inside and outside counsel, where corporate counsel challenged private practice lawyers to find ways to reduce inefficiencies, allocate resources more effectively, and take other steps to increase value. In turn, ACC has worked with corporate counsel and law firms to develop a range of resources for making progress with the Value Challenge (many of which have been excerpted and adapted for this Europe-focused resource). The *ACC Value Challenge Briefing Package* noted that, “the hourly rate billing model that has ruled for decades is giving way to a greater focus on terms emphasizing value delivered instead of time spent.”

In the last few years, as outside counsel have made strides in offering alternative fee arrangements and corporate counsel have made progress in reducing their external legal spend, the ACC Value Challenge principles have evolved. Corporate counsel have ever-increasing pressures to do more across a wider, riskier territory with complex regulatory challenges and limited resources. They often cannot increase headcount and have stagnant or declining budgets. A major 2012 study\* found that 30 percent of more than 100 legal functions of large companies in Europe had seen budget reductions in the last 18 months.

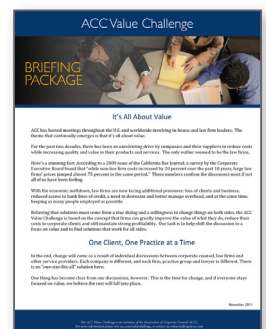
Efforts by corporate counsel to re-think and reengineer the in-house legal function to increase productivity and efficiency have led to a broader scope of the ACC Value Challenge. This view guides the structure of this report on the Value Challenge in Europe. In this report, we will focus on a range of activities to deliver value in legal services both with outside providers and inside your organization. Today, the providers are a widening group, although law firms are where much of the legal spend still resides.

The following is from materials that originated in 2008:

*“The ACC Value Challenge is based on the concept that law firms can greatly improve the value of what they do, reduce their costs to corporate clients and still maintain strong profitability.”*

Changes are also needed from inside counsel:

- Consider going back to long-term, trusted relationships, and maximizing continuity and expertise from the firms.
- Let junior associates do front-line work again, especially if the firms adjust the costs of these lawyers to reflect the value of their contributions.
- Work together to find mutually useful solutions.”



\*Global Agenda: Issues and Priorities for Senior Corporate Counsel Worldwide, see page 11.



## I B. Anecdotes: How inside and outside counsel in Europe are delivering more value

“We had to identify our legal costs clearly across Europe before we could determine the correct steps to reduce legal costs. It turned out to be a surprisingly difficult exercise to clarify costs. But once we did, we could prepare and allocate specific and realistic budgets, and that has made a huge difference.”

- **Sandra Mori**, *GC Europe, The Coca-Cola Co.* (see Case Example, p. 36)

“We have been able to increase value by focusing at the start on our specific goals and objectives, as well as measures of success. It allows us to align what we want to do, and should be doing, with business goals, and helps shape arguments to business leaders. As regional general counsel it provides structure for strategic direction of the team, rather than individually.”

- **Janice More**, *General Counsel Europe, H J Heinz* (see Case Example p. 21)

“Our results have been to move nearly one-third of all requests for legal support to be handled by an LPO, enabling us to shift a number of our legal professionals to growth areas where we require support. We have reduced outside counsel spend on commercial matters, which we can now handle in-house. Our legal team is happy to be working closer to internal clients on higher value/risk transactions.”

- **Chris Fowler and David Gribble**, *BT Global Services UK* (see Case Example, p. 70)

“The best focus area for a first step to get more value from external firms is to be more disciplined about the rates they pay, and wherever possible, get a fixed fee. That requires careful choice of supplier and an in-depth discussion about the scope of the project. It's important to get the balance right, on the fee agreed and how the work will be managed. It may sound obvious, but often it isn't: As a law firm we are able to reduce the fee by reducing the number of hours we work.”

- **Paul Smith**, *Partner, Eversheds*

“We realize we like our jobs better and are more valued when we work closely with our business operations worldwide. Our long-term approach to reducing disputes and lowering litigation costs through early settlement required in-house lawyers to be very proactive about connecting with local business leaders to negotiate settlements. We've dramatically lowered external legal costs and frequency of disputes.”

- **Pietro Galizzi and Francesco del Giudice**, *Corporate Law Department, Saipem* (see Case Example, p. 61)

“We can deliver better value when the in-house counsel takes time with us to scope the project at the start and regularly review progress with us. Often, a client will retain us because he/she thinks an outside lawyer is needed, but nothing is mapped out yet. Instructions that are unclear cost a lot more. We can deliver far greater value for cost when the client gains a clear picture of what is really needed, and invests the time and money in those specific areas.”

- **Bruno Cova**, *Partner, Paul Hastings*

“An excellent first step is to encourage your providers to give you greater (and more granular) reporting of matter status. This reduces ‘surprises’, provides the general counsel with better visibility of law firm capabilities by jurisdiction or practice, and helps strengthen the client—law firm relationship. This also will encourage the law firms to better manage, control and review matters for future efficiencies.”

- **Laurie Robertson**, *Global Business Development & Marketing*, Baker & McKenzie

## I C. Why is this important now?

### The Business Case

Companies are changing the way they buy legal services—gradually in some instances and drastically in others. The hourly rate billing model that has ruled for decades is giving way to a greater focus on terms emphasizing value delivered instead of time spent. This is evident from anecdotal accounts at legal industry conferences, and is defined even more clearly in recent client survey data.

The *Guide to the ACC Value Challenge in Europe* is spurred by corporate law departments’ realization that they must address efficiency and productivity in light of several factors:

- increasing complexity of corporate structure, products and services;
- expansion into numerous high-growth and emerging markets where significant legal support is required;
- growing regulation and stringent regulatory enforcement, requiring enhanced compliance efforts; and
- the uncertain economy, squeezing corporate profit margins, which pressures the legal function to stabilize or reduce costs.

In 2012 research\*, senior corporate counsel in 21 countries across greater Europe responded that their greatest concern is to “meet demand for our services given resource constraints.” Their three most important priorities for their legal function in the next year are:

- 1. Improve compliance capability;**
- 2. Reduce external costs of the legal function; and**
- 3. Reorganize/restructure function for higher performance and productivity.**

Many of their secondary priorities were connected to these top priorities:

- improve contracting management support;
- improve knowledge management capability;
- work more effectively together within the corporate legal function;
- offer better professional development for our legal professionals; and
- improve our management of law firms and other providers.

\*WLG Global Agenda: Issues and Priorities for Senior Corporate Counsel Worldwide, see page 11.

**\*Global Agenda: Issues and Priorities for Senior Corporate Counsel Worldwide** is a 2012 study conducted by the World Law Group in conjunction with LexisNexis Martindale-Hubbell and ELD International. Nearly 130 senior in-house counsel from large companies in Europe participated in the global study, and some of their responses are reported here. For a copy of the complete study visit [www.TheWorldLawGroup.com](http://www.TheWorldLawGroup.com).

The drive toward greater value shown in the *WLG Global Agenda Study* is not surprising, and many corporate law departments are seeing the benefits. Many legal functions have reported very substantial savings (15 to 40 percent). In addition, the corresponding benefits of the value-based approach include reduced administrative burdens, better-aligned incentives (when provider fees are correlated with results achieved for the client), and increased productivity and efficiency, accompanied by more predictable and desirable results.

Against this backdrop, value-based fee structures are seen as an effective way to manage external legal costs. The *Guide to the ACC Value Challenge in Europe* goes beyond the cost of external providers alone. It is a way of organizing and running the law department in a more competitive global business environment, focusing on deriving greater value from all resources, including those within the organization. More law departments are drawing support from other corporate divisions to increase productivity and performance through innovative use of technology, knowledge sharing and similar management tools—all to improve the company's bottom line. Many functions in today's corporations are being asked to do more without increasing their budgets. The argument that "legal is different" is increasingly falling on deaf ears.

## I D. Who wins?

What do the in-house legal function, external providers, the company and its stakeholders stand to gain?

- Reduce inefficiencies.
- Increase productivity.
- Improve the way legal services are purchased and delivered.
- Focus on results and outcomes that add value for the corporate client.

*"Through a detailed study in our UK Legal team (commercial transactions), we found that more than half of our work was on low complexity transactions/ activities with revenues/risks under £10m, and less than 20 percent of all work was on high complexity/higher risk work with revenues/risks over £50m. We wanted to shift our legal team's focus to support internal clients on higher value/risk work."*

**- Chris Fowler and David Gribble, BT Global Services UK, from case example p. 70**



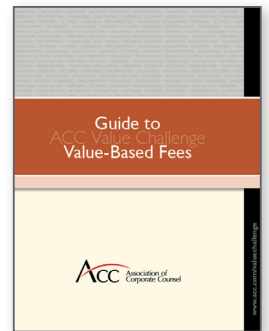
## I E. Your law department's journey to higher value

Wish as you might, you cannot completely change your organization's legal services approach overnight. The journey to higher value is almost like learning a language; one must proceed step-by-step. Because each step yields some benefit, you will gain momentum as you continue to move forward in the journey.

A word of caution is also warranted here. The initial shift to a value focus and the structures it requires is not easy—few worthwhile things are. Part of this effort will be to decide what you are going to do, evaluate the potential return on investment (ROI), and agree on an investment of time and effort to achieve these goals. If you lack broad commitment and “buy in,” the advisable approach would be to pick one or two areas and then build on your success more gradually.

Otherwise, trying to move mountains on a broad scale without full commitment is a tricky proposition. Either way, if you invest time to do this correctly, you can deliver great return to your company while maintaining high-quality legal services. And you will become a better manager and guardian of your client's resources and trust.

Partly adapted from  
ACC Guide to Value-  
Based Fees – 2010



### RESOURCES

#### ACC Value Champions

ACC Value Champions are law department and law firm leaders who have made great strides in improving the value of legal spending by implementing pricing and other management practices as part of the ACC Value Challenge. [www.acc.com/valuechampions](http://www.acc.com/valuechampions)

This initiative emanated from the success stories and collaborations ACC has heard about and allows ACC to publicly recognize individuals in departments and law firms who are not only making a difference for their organizations through creativity and value-based legal management skills, but are also effecting change within the legal industry.

#### Covenant with Counsel

A one-page covenant between clients and outside counsel to focus on value. The document is meant as a starting point for discussion, with law firms and corporate counsel free to tailor it to their particular needs. [www.acc.com/legalresources/resource.cfm?show=147712](http://www.acc.com/legalresources/resource.cfm?show=147712)

## **PART I: LAY THE FOUNDATION FOR SUCCESS**

### **Chapter 2. What's Different For the ACC Value Challenge in Europe?**

#### **2 A. What do we mean by “Europe”?**

For this ACC Value Challenge guide, when we say Europe, we mean a region made up of many countries, with a range of governmental structures, legal systems, languages and cultures. We do *not* suggest that Europe is a federation of nation states where you will be able to implement your value-building activities in a uniform way. Europe is indeed a regional market with many significant distinctions in culture, politics and government systems, all of which have an effect on the law.

Europe is made up of a number of countries that follow civil law and other countries that follow common law. Civil law countries include: France, Benelux countries, Italy, Romania, Spain, Germany, Austria, Switzerland, Estonia, Latvia, Czech Republics, Slovenia, Slovakia, Greece, Portugal, Turkey, Denmark, Norway, Sweden, Finland and Iceland (Scandinavian civil law). The common law countries in Europe are England, Wales and most of Ireland. Scotland has a mixed law system of both civil and common law.

In the European Union, the Court of Justice takes a mixed approach, using civil law (based on the treaties) while emphasizing the importance of case law.

In the European Union, part of the legal regime is homogenous, in that certain laws are the same in every EU member state. Another part of the EU legal regime is harmonized through an EU directive allowing each country to (broadly) interpret and enforce it as it wishes. The rest of the law is independent by member state.

There is also the European Economic Area, or EEA, which includes the EU countries plus Norway and Switzerland. In the EEA, there is a harmonized legal regime with the EU (such as competition law).

Among the European Union's 27 countries, 15 have the Euro as the currency, and now they are establishing a banking union.

The judicial systems are different from one country to the next, with some viewed as being independent and efficient and others as being influenced by politics and business interests. For example, courts in England and Wales are considered more independent and not influenced by politics or other interests, while courts in Russia are viewed as less independent, with politics and other interests considered by many to influence court decisions.

For your organization, Europe could mean any or all of the following countries.

### Countries in Europe (depending on your definition)

Albania	Armenia	Austria*
Azerbaijan	Belarus	Belgium*
Bosnia & Herzegovina	Bulgaria*	Croatia
Cyprus*	Czech Republic*	Denmark*
Estonia*	Finland*	France*
Georgia	Germany*	Greece*
Hungary*	Iceland	Ireland*
Italy*	Kazakhstan	Kosovo
Latvia*	Lithuania*	Luxembourg *
Macedonia	Malta*	Montenegro
The Netherlands*	Norway	Poland*
Portugal*	Romania*	Russia
Serbia	Slovakia*	Slovenia*
Spain*	Sweden*	Switzerland
Turkey	Ukraine	United Kingdom *

\*European Union members (27 countries)

The definition of correct borders of the Europe continent has always been a big question for geographers and politicians. Europe is a unique continent is not surrounded by water from all directions, and has overland borders with the neighboring continent of Asia. Thus, Armenia and Cyprus may be considered European countries, though geographically they are located in Asian territory. Islands in the Mediterranean Sea and North Atlantic are generally considered part of Europe. Azerbaijan, Georgia, Kazakhstan, Russia and Turkey may be considered part of both Europe and Asia. In the list above, we chose the wider definition.

## 2 B. Professional development and focus of in-house counsel in Europe

A 2012 global study of corporate counsel leaders\* (cited in Chapter 1) gathered survey responses from 123 senior in-house counsel in 21 countries of Europe. The following survey data gives us a sense of the development and focus of in-house counsel in Europe.

The participants' titles are:

- Chief Legal Officer/General Counsel (or other head of an in-house legal function) 50%
- Region or Division General Counsel (or equivalent) 18%
- Deputy General Counsel (or equivalent) 8%
- Asst. General Counsel (or equivalent) 11%
- Senior Counsel (and other titles) 12%

To appreciate how the profession of in-house counsel as well as the appreciation for their role within companies, has improved substantially in the last five to ten years, the study shows that senior counsel respondents report to high-level executives in their organizations.

Respondents report to:

- Chief Executive Officer or equivalent 30%
- Chief Legal Officer/head of in-house legal function 39%
- Chairman/Board of Directors or equivalent 11%
- Chief Financial Officer or equivalent 9%
- Chief Operating Officer or equivalent 1%
- Other 9%

Ninety-four percent of study respondents in Europe have direct access to their company or division's leadership. Five percent said they have access somewhat, 1 percent "only indirect access," and no one said they do not have access. This is excellent news, and shows that if corporate counsel can present compelling returns of efforts to derive more value externally and internally, they will have the ear of executive leadership.

The *WLG Global Agenda Study* shows that senior corporate counsel in Europe are generally happy with their jobs (51 percent like their job more now than a few years ago, 27 percent say no change). The reason that comes up most often for their answer is "stronger role of corporate counsel" (48 percent).

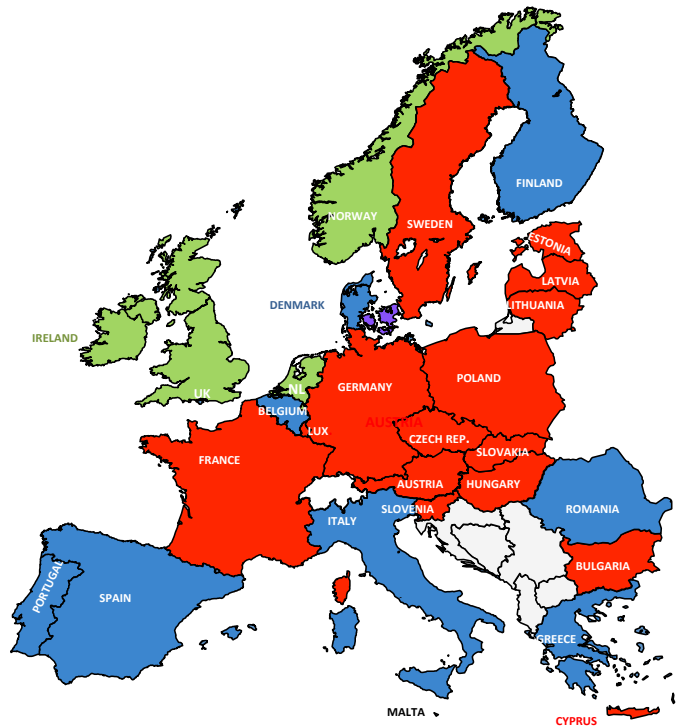
We believe that corporate counsel in Europe (and elsewhere) can have greater impact and more satisfaction with their work when they make progress in achieving more value from internal and external resources. As stated in Chapter 1, the study shows that the biggest concern for European counsel is ***to meet demand for services given resource constraints***. The second biggest concern is ***managing so many compliance challenges***.

The highest priority among senior counsel in Europe is to ***improve the compliance capability***, and directly following that is the priority to ***reduce external costs of the legal function***. Three out of four of the biggest concerns and priorities of senior counsel respondents in Europe related to the effective management of resources—both external and internal providers.

**\*WLG Global Agenda: Issues and Priorities for Senior Corporate Counsel Worldwide, see page 11.**

## 2 C. Privilege restrictions

### Legal Privilege for In-house Lawyers in the European Union



**Green:** recognize legal privilege for in-house lawyers, including in the context of antitrust investigations

**Red:** do not recognize legal privilege for in-house lawyers

**Blue:** recognize some degree of legal privilege for in-house lawyers, but as to whether and to which extent legal privilege is respected in antitrust investigations, is unclear or not yet settled.

*This map was provided by Dirk Tirez, General Counsel & Corp. Secretary of Belgian Post, from a presentation he prepared for the 2012 ACC Annual Meeting in Orlando.*

## 2 D. Key differences in Europe; market practices and cultural mores

Many components of the ACC Value Challenge are the same regardless of where you are doing business. Others components must be tailored locally, considering market practices and cultural mores. Laws and regulations are written and communicated in words, and so language takes a specific significance in the legal services industry, particularly with globalization of business. Since an effort to derive more value from internal and external legal resources requires excellent communications, appreciation of language differences is essential.



Nowhere but Asia are the cultural and language differences more significant to the role of corporate counsel's work than Europe. There are 23 official languages within the European Union, and an estimated 200+ total languages spoken (regional variations of languages, such as Swiss German, and dialects). There are the official and working languages of governments of the European Union countries.

Bulgarian	Czech
Danish	Dutch
English	Estonian
Finnish	French
German	Greek
Hungarian	Irish
Italian	Latvian
Lithuanian	Maltese
Polish	Portuguese
Romanian	Slovak
Slovene	Spanish
Swedish	

### References

European Commission Multilingualism. (24 November 2010). *European Commission - EU Languages and Language Policy*. Retrieved from: [http://ec.europa.eu/education/languages/languages-of-europe/index\\_en.htm](http://ec.europa.eu/education/languages/languages-of-europe/index_en.htm)

As you craft your plan to derive more value from external and internal resources in Europe, think about the potential obstacles and opportunities in implementation, for each market where you are active. Consider ways to tailor your approach to adapt to the local legal system, culture and common practices. Address the obstacles or resistance that you expect you may encounter in some jurisdictions, based on common local practice.

The following questions can be adapted to your Value Challenge exercise. These are taken from a longer checklist on "Instructing Overseas Lawyers," published by Practical Law Company in February 2012, and written by Paul Hodges and Craig Tevendale of Herbert Smith LLP. These practical questions may help facilitate a constructive dialog about improving value.

#### Your external providers

- Where are your external lawyers qualified to practice law?
- Which professional rules apply to your advisers?

### The practice

- Does the practice have:
  - lawyers that are accustomed to working in in-house/external teams?
  - support staff that speak your language?
  - the infrastructure you need for reporting and measurement?

### Fees

- How will the fee be calculated?
- How many lawyers will be working on the project?
- What value-added services are offered, and which are complimentary?
- Are there compulsory taxes on the bill?
- Do we have to pay for anyone else on this transaction (such as a notary)?
- Are there statutory minimum charges, and can we exclude them?

### Fee disputes

- Is there an arbitration procedure?
- How much does it cost?
- Have we excluded it by excluding statutory charges?
- Do our external lawyers have a lien over our papers?
- Will professional courtesy rules make changing our lawyer during a dispute difficult?

### Conflicts and confidentiality

- Is the firm an expense sharing association or part of an alliance?
- What conflict checking systems does the practice have?

### Client protection

- Is there a compensation fund? Is it discretionary or limited?
- Are all partners liable in the firm, or just your particular lawyer?
- Handling of the client's funds:
  - Do rules exist in the jurisdiction?
  - Is there a bar audit?
  - Is the disciplinary system effective?

## PART I: LAY THE FOUNDATION FOR SUCCESS

### Chapter 3. Define Your Objectives and Strategy for Higher Value

As the saying goes, if you don't know where you want to go, you'll probably never get there.

The first step in any law department effort to increase value is to decide what you want to do and how you are going to do it. We've already suggested that you prioritize: Don't try to do too much at once, or you may achieve nothing in the end.

“Begin with the end in mind.” Author Stephen Covey's quote is a sound starting point when developing and designing your initiative to derive more value from external or internal resources. You and your team will need to answer key questions such as:

1. What does our law department seek to accomplish and why?
2. What must we change and how?
3. What are the best ways to achieve our goals?
4. What resources do we need?
5. How will we measure our progress?
6. How will we communicate our initiatives and progress to internal clients?
7. How do our legal service providers fit into all of this?

While these issues can be approached in any number of ways, we offer this simple diagram as a practical frame of reference and starting point to taking action. We've divided this complex issue into six key steps that we believe offer a path to successfully executing a value-driven program in the context of the legal services. You may wish to follow your own steps or sequence, but this is effective for many:



- **Define**...value.
- **Scope**...the work to be performed.
- **Assess**...internal and external resources and opportunities for improvement.
- **Implement**...processes, measurement tools, reporting, etc.
- **Manage**...the legal work and the project coordination.
- **Evaluate**...the quality of results and processes and how to improve.



One of the benefits of following this framework is that it allows you to identify distinct roles and requirements to guide both inside and outside counsel and their teams as they jointly focus on legal and management issues. These are also roles for additional support resources, like project managers, service providers, and others who may assist in managing legal, financial and operational components of your effort. But the core principles apply regardless of who is performing the tasks and whether additional support resources are available. If both internal and external resources are willing to engage in candid dialogue and to execute on your selected approach, then success is within reach.

**TIP:** “One of the best ways for a law department in Europe to begin getting greater value from in-house resources and control external legal spend is to focus on a discrete legal area/or a range of jurisdictions, in order to demonstrate impact. Areas of pan-European transaction work are good areas to try this out, as well as certain securities-type functions, or discrete areas such as IP, Employment and Real Estate.”

- **Stuart Dodds**, *Director of Global Pricing & Project Management, Baker & McKenzie*

### 3 A. Clarify what you seek to accomplish and why

You may have a clear idea in mind of what you want to do, and you are anxious to get started and see some results. Before you jump in, it is important to step back and carefully consider the foundation you will need to build in order to make lasting changes. Every in-house counsel in Europe we’ve talked with who has had success in increasing value, has emphasized the importance of the first phase of defining objectives and determining strategy and actions. If your initial presumptions are incomplete or faulty, your approach will not be effective.

The articulation of your goals and objectives must be crystal clear (see Chapter 4, Communications as a Value Lever), and input from all parties involved is necessary. It doesn’t need to be a lengthy program—short discussions will suffice. But it’s important to create ‘buy-in.’ At all levels of your in-house legal organization, across Europe and internationally, individuals should be able to describe clearly in a few sentences, what you are trying to do. “Cutting costs” or “saving money” is probably not enough—where does the value come from? When you explain to internal business clients and other corporate functions this initiative, your explanation must be concise and compelling.

### 3 B. Gather input from your business clients

It's essential to understand how your internal business clients perceive you and how they would like to see changes in legal services support. It does not require expensive research to do this, but deciding what information you need to have and how best to gather it is crucial. An obvious approach is to conduct interviews following an agreed questionnaire, carried out by members of the in-house legal team.

*“Like other teams at our company, we send a quarterly feedback form by email to assess the performance of the legal team and individuals in the team. We ask what the lawyers should continue doing, what our internal clients would like to see more of, what they should stop doing. The feedback is useful in appraisals and in developing our objectives. A year ago the feedback spurred us to do something game-changing: to shorten our response times and also reduce the number of repeat (low value) requests by providing legal training and more information online.”*

**- General Counsel, Europe region, international company**

### 3 C. Identify changes required for your in-house team

Clarifying ‘what you seek to accomplish and why’ will lead the in-house team leader to recognize changes needed in individual skills and team approaches. These changes should be identified and incorporated into your action plan. For example, you may decide that in-house lawyers need to follow a consistent process to probe internal client needs when receiving a request. They may need to gain skills to scope assignments in order to determine the resources required, and this may result in a training workshop.

### 3 D. CASE EXAMPLE

#### **Alignment through VGSM: Vision Goals Strategy Measures**

Janice More, Vice President - Europe General Counsel, H. J. Heinz Company Limited

Timeframe: early 2011 to present

#### ***Situation***

We sought a goal-setting mechanism to drive how we work in the Europe legal function at H.J. Heinz that would facilitate the uniting of a geographically dispersed group towards achieving common goals. We also wanted to connect the mechanism to business goals and strategy, and for goals to be meaningful. We sought an aid to work actively on collectively and individually achieving our goals, every day of the year.

The VGSM (Vision, Goals, Strategy, Measures) had been used by some functions and business lines at Heinz and we adapted it for legal. We deliberately used the same vision and goals as our European business, to be fully aligned with our business colleagues: delivering volume, profit, market share, etc. We then developed the strategies and measures for legal that we believed would facilitate the achievement of the vision and goals.

### ***Goals/objectives***

Our goal was to drive alignment of the work in the in-house team to our business goals, and to maximize results by working on these goals across Europe as a team. We measure progress toward these goals through satisfaction surveys with the business, and also through the in-house legal performance review process.

As part of the VGSM approach, measures are built into every strategy, so we are clear about what we seek to achieve, and how we will measure results.

### ***Roles and action steps***

1. As General Counsel, I annually propose a skeleton approach, suggesting strategies. We obtain the Europe VGSM and the VGSM for the local businesses across Europe. This is circulated to Europe in-house lawyers to review; we circulate suggestions and ideas.
2. We then have a planning session (about one day). One lawyer is responsible for each focus area. The construct at this stage is primarily on building our pillars, such as risk mitigation. We then go through it on a local and pan-European level, with everyone contributing to the ideas and drafting. After the first time doing this, it comes together relatively quickly.
3. We also input views and goals from the global Heinz general counsel, and incorporate strategies and measures for the goals he proposes. We look at which risks to mitigate and how we will measure them. We prioritize and are as specific as possible. So, for example, if it's an IP rationalization strategy, we will note that 100 percent of all trademarks be reviewed for very specific elements.
4. We then have a good draft of strategies and measures, and begin finalizing. We get input from the business lawyers who also take it to local business leaders for input, and then it is reviewed by all key parties in our legal function.
5. Then, every in-house lawyer draws up a personal detailed action plan, which describes how the strategies will be followed, and sets personal goals connected to the VGSM that each person takes accountability for locally. For example, the country in-house lawyer may include in her action plan to work with the IP lead lawyer on rationalizing the IP portfolio in a particular country. The Europe general counsel reviews for thoroughness and to avoid overlaps.
6. Each in-house lawyer tracks and scores progress, relating to measures that have been set and approved.

### ***Results***

We recognize much more dynamic progress, and we have been achieving our individual measures set out in the VGSM. It gives a specific framework for in-house lawyer performance reviews and makes review discussions more meaningful. It has provided structure to how our legal professionals focus their time, keeping them far more focused on their strategies and measures. Internal business clients have commented that they now view us as more professional and business-like, and see us as far more aligned with them. In turn, our legal team is motivated by feeling more connected to the business.

We see it as more and more of a mechanism to align what we want to do and should be doing, with business goals. It helps shape arguments to business leaders. For the GC, it provides structure for strategic direction of the team, rather than individually. Everyone brings their goals under this umbrella. This brings cohesion to the multi-jurisdiction team. It helps us speak clearly to the business: *“Here’s why you should invest in this online compliance program.”*

### ***Obstacles***

In-house lawyers initially saw it as a major, time consuming change, and they were a bit uncertain at first. At the start, it is a challenge to really think about what you’re trying to do, in a business-oriented way. In the second year, it became much easier, and we’ve been told by other functions that it becomes easier year after year. People get used to the mechanism, and it becomes more useful in guiding our work. We immediately saw the value in the process the second year.

Our biggest challenge as lawyers was to deconstruct and reconstruct in this very structured way, and to articulate what is usually unsaid—the strategies and the measures. In our first round of assembling the Legal VGSM, all of us at times got confused between the strategies and measurements. Once we started implementing it, it became obvious.

### ***Next steps***

Our new law firm panel arrangement started in May 2012, just after the VGSM was prepared, so our external firms have not been a part of it yet. But we absolutely want them to be involved. We will use it to get their input into how we can best achieve certain strategies. For example, we are talking to them about how legal can add value via risk mitigation. With each firm, depending on what they’re doing for us—we plan to throw out a challenge and come up with solutions through brainstorming. These will be folded into the strategies and measures.

## **3 E. Identify changes required for your external providers**

Do not proceed with your approach in a vacuum. We strongly encourage dialog with your preferred external providers as you develop your action plan. Law firms, for example, often have significant experience working with clients on value-driven projects similar to what your in-house team is doing. They also know your company and how your legal function works. They can often provide valuable input at the development stage, if you ask them.

Effectively answering the questions posed at the start of this chapter requires in-house counsel to first have a detailed understanding of business goals and strategy. It will then be necessary to brief external providers on the business goals and strategy, and the concurrent legal department goals. The in-house team is in a position to effectively get input from and guide outside counsel on how they can best fit into these broader efforts and deliver greater value to the company.

Addressing these questions will help the legal department to explain what drives value inside and outside the in-house legal function. For example, value can be added by:

- expeditious resolution of a major dispute ;
- effectively completing certain deals or transactions;
- by providing advice and counsel to prevent certain issues from arising in the future; and
- by shifting commodity work to lower cost providers.

A law department should also determine which of the factors that “drive value” should take priority. In this way, each law department will ultimately define value in a unique and customized approach to fit its company’s specific goals and objectives.

Beyond subject matter (“the what”), there is valuable strategic guidance to be conveyed as to the manner in which the work is performed (“the how”). Ask questions such as:

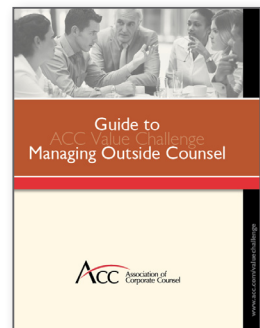
- What is the role of technology in utilizing existing work product and facilitating interaction among client, law firms and vendors?
- How important are cost savings, and what is the best way to achieve them?
- Is there a role for innovation in the delivery of legal services in our organization?
- Is there a place for alternative sources of legal service, such as legal process outsourcers?
- What is the best time frame for measuring success?
- When might the plan be reviewed for adjustments?

Answering these questions during the planning process will help lay out the path for how best to structure outside counsel efforts and terms to deliver greater value in a manner that best suits your organization and your current situation.

In-house counsel may often find that when they ask their external providers to help them by suggesting ways to increase value, they receive a lot of suggestions that don’t necessarily apply to their situation or are not feasible in their company. In order to move more quickly in managing change with external providers, it’s important to specify the changes required based on your goals and objectives. If the change is a 15 percent overall reduction in legal spend, you will want to get specific about how those savings will be realized, without exposing the company to greater risk.

Changes required from your external providers often require the development of agreements and processes, and a few resources are provided in this guide. The following quote gives an example of how an in-house counsel can provide specific requirements to work effectively with the external lawyers to reduce costs.

Adapted from ACC  
Guide to Managing  
Outside Counsel – 2011





*“One of the most effective ways for the in-house counsel to reduce costs is not by discounting, but to take time at the beginning of a matter to define scope of work and manage according to that scope. It involves a detailed discussion with outside counsel on what is needed, what the company wants, how and when one wants to receive it. From the beginning, the outside counsel can often suggest a better angle to save money, or another way to look at the issue. Often, we’ll agree to segment the work in phases, and sometimes, split the work among the inside and outside counsel teams. We then agree on phases or milestones to re-assess how to go forward based on previous costs and outcomes.”*

**- Bruno Cova, Partner, Paul Hastings**

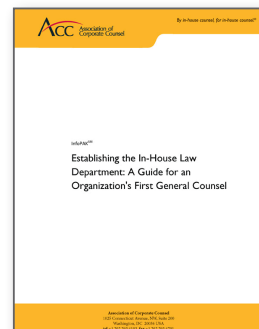
### 3 F. Tools, templates and resources

#### Tips for thinking about how to achieve and demonstrate value

In addition to using value estimates, corporate counsel can demonstrate law department value in the following ways:

- In highly-regulated industries, develop corporate compliance programs that clearly meet the requirements of relevant regulatory agencies, and/or engaging in constructive dialog with regulatory officials.
- In cases where litigation was avoided or settled, in-house counsel should make sure management knows that high court costs were avoided. The value of these cost-savings can be estimated by looking at the historical costs of similar litigation.
- Keep track of any work product created by the law department that can be proven to mitigate risks (e.g., codes of conduct, employee training materials, etc.). Work product is particularly useful at demonstrating value if it was created in response to specific business expectations.
- Set clear law department goals (i.e., through a mission statement or strategic plan) and then periodically documenting metrics that demonstrate progress toward achieving strategic objectives.
- Survey clients about their satisfaction with specific in-house lawyer and law department performance. Although satisfaction surveys are subjective measures, they can be designed to use a quantitative scale (e.g., scoring on a numerical scale), so that results can be benchmarked and compared over time to demonstrate individual and departmental performance improvements.

Adapted from  
Establishing the In-house Law Department:  
A Guide for an  
Organization’s First  
General Counsel – 2012



## RESOURCES

Vicken B. Bayramian, “The General Counsel as Strategic Thinker,” *ACC Docket* Vol. 29 No. 2 (March 2011): 23-27, available at [www.acc.com/legalresources/resource.cfm?show=1277470](http://www.acc.com/legalresources/resource.cfm?show=1277470)—highlights the importance of framing of framing legal issues in the context of business advantage; see particularly, “Ten Ways to Improve Your Strategic Thinking,” p.24.

Mark Roellig, “Making Your Legal Organization a Strategic Asset for the Business,” *ACC Docket* Vol. 28 No. 2 (March 2010): 62-68, available at [www.acc.com/legalresources/resource.cfm?show=805483](http://www.acc.com/legalresources/resource.cfm?show=805483)—addresses how to align structure with strategy to achieve business objectives; also discusses use of long-range strategic plan for the legal department, with annual measurement and feedback on progress vs. goals.

“Top Ten Tips for Speaking the Language of Your Business Partners.” *ACC Top Ten* (Oct. 2009), available at [www.acc.com/legalresources/publications/topten/speaking-the-language-of-your-business-partners.cfm](http://www.acc.com/legalresources/publications/topten/speaking-the-language-of-your-business-partners.cfm)—see particularly #1, “Understand How Value is Defined, and #9, “Get The Best from Your Outside Counsel”.

“ACC Value Practice: Using a Disciplined Internal ‘Hoshin’ Planning Process to Enhance Alignment with Business Clients – Law Department Practices at Toyota Motor Sales USA, Inc.,” *ACC Value Practice* (Sept 2009), available at [www.acc.com/legalresources/resourcecfm?show=537228](http://www.acc.com/legalresources/resourcecfm?show=537228)—The annual process “allows the law department to demonstrate to business leadership that it is marshaling resources and addressing what is top-of-mind for them in a way that aligns priorities.” See also the included link to a sample strategic planning tool.

## **PART II: VALUE LEVERS IN EUROPE**

### **Chapter 4. Communications**

#### **4 A. Before you act, take time to meet and talk**

Communication is an essential method and tool to deliver value, and this chapter focuses on communication in two ways. The first way is to consider how corporate counsel and other stakeholders can best communicate to share and exchange information and ideas in order to find the best solutions for deriving more value internally and externally. The second way is to use good communication techniques for the value effort itself, in order to effectively define, explain and report progress on value initiatives to each audience.

Communication is essential to achieve buy-in on the effort, and to support and motivate individuals in achieving results. Communication breakdowns within an in-house legal function or a law firm in Europe, especially if the function encompasses several countries, can seriously damage and derail the effort to deliver greater value.

The easiest way to start on your Value Challenge in Europe is for in-house counsel to pick their three best law firms or practice groups (and for outside counsel to do the same with their three best clients). Then, arrange a two-hour meeting with a single question for discussion. This is the premise for the ACC's Meet.Talk.Act. concept, which you can find in 4G, Tools and Resources.

#### **4 B. Develop your communications plan**

How, to whom, and how often will you communicate what you're doing and how it's progressing? It is important to define and develop a plan for communication at the beginning of the project, to make sure that all stakeholders are sufficiently informed and aware of developments. It does not have to be long or complicated; in fact, the less complicated the better—people have enough to read already.

A good communication plan identifies the goal of each communication; the target audience for that communication; and how the communication can be made most effectively, whether by meeting, email, report or other. The communications media you choose will depend a great deal on your audience and your organization's typical methods of communication.

The plan should also identify those responsible for initiating and tracking each type of communication, and should state the desired frequency of each communication. Finally, the communications plan should identify the expected outcomes of the communication and specify responsibility for following up on any action items.

Most important, communications is an area of the Value Challenge that the legal team must commit to for a reasonable time period. If you develop a communications plan, stick with it consistently. Nothing shows a lack of seriousness as much as launching a bold new approach and then reporting nothing more about it. Without proper communication, your team will not know if they are really making progress, and the business organization will not know how or when to offer positive feedback.

**TIP: Stakeholder communications**

In building the communication plan, each stakeholder group should be analyzed to determine their support or opposition to the project. From that analysis, a specialized communication approach can be developed and incorporated into the overall plan.

As discussed above, developing a communication plan is a key part of the planning process for the project. Part of administering the project includes making sure that communications keep all stakeholders in the loop. As the project unfolds, it may be appropriate to amend the communications plan (e.g., to add to the audience, change the frequency of communications or make other appropriate changes).

*“Open dialog is essential to an effective client- provider relationship. There is a lot of uncertainty involved in any alternative fee arrangement. You have to trust someone, and give it a go. A frank question that must be taken seriously is: Can you partner with us on this? These relationships involve trust and emotional leaps of faith; as in-house counsel, you want to get all your internal and external lawyers thinking about your issues. Frequent and open communication helps to take the uncertainty and risk out of it.”*

**- Laurie Robertson, Global BD and Marketing Officer, Baker & McKenzie**



## 4 C. Cross-border communication to help deliver value

Communicating across borders where there are cultural differences, including different languages, compounds the communication challenge. There must be a significant extra effort to be clear.

*“Effective communication is perhaps the most daunting challenge of a global legal team, yet it’s a crucial element for success. Without regular and effective “downward communication,” your team will become fragmented as individuals wander away from the team strategy towards their own best guesses. Without regular and effective “upward communication,” you will not be able to guide the global team.*

*The basic default communication media for global legal teams are email, telephone, video conference and face-to-face meetings. Email has the luxury of transcending time zones, but as many of us know, it is highly inefficient and ineffective. It can work for “one to few” communications on simple issues that*

*do not have cultural nuances or require collaboration, but that is its limit. Act affirmatively to limit the sanctioned use of email in global communications.*

*An effective communications approach uses all means available, and optimizes the use of each. Many collaborative communication tools are now available and really help with foundational communication. One example is Microsoft's SharePoint. It is a browser-based collaboration tool and document-management platform, and in conjunction with a global legal team's intranet, can be used to host shared workspaces and documents, as well as wikis and blogs."*

**- Tim Glassett, former General Counsel, Hilton Hotels International**

## 4 D. Guidelines for effective use of email

*"The single biggest problem in communication is the illusion that it has taken place."*

**- George Bernard Shaw**

Nowhere is this wise comment truer than for email correspondence.

Often, there is costly waste or repetition when communication is not clear. Good communication is thus a primary way to increase value. For this reason, corporate counsel in Europe and around the world must devote special attention to training their people in effective email etiquette.

The following guidelines were adapted from a major global hospitality company.

### **Guidelines for email to external providers and in cross-border communications**

#### Choice of media

- Avoid using email when a personal call or visit is possible and more appropriate.
- Use a phone call first and follow up with email if the person you are emailing speaks a different native language than you.
- Target your audience carefully when you send information.
- When communication seems unclear or tense, break the cycle of "send and respond" and call the other person to discuss personally.

#### Response

- Try not to respond (and do not expect responses) to emails outside reasonable business hours unless agreed in advance.
- Always ask outside providers when they need a response, and respond within that timeframe.

## Form/content

- Create single-subject messages whenever possible.
- Make the subject of your email as specific as possible.
- If you send the email to more than one person, make sure that you clarify what you expect from which person. Don't assume that they will know.
- Try to keep email messages shorter than a half page (if they were printed).
- Try to have a consistent structure to your emails that regard an instruction to an outside provider.
- Identify the matter the email is about.
- Raise briefly the issue to be discussed.
- Clarify your question or what you are asking the outside provider to do:
  - Clarify the deliverable you expect (e.g., email, call, memo, opinion) and timing;
  - Define any budget issues the provider should know, if appropriate.
- Choose your words carefully if those reading the email are not native speakers of the language the email is written in. Avoid idiomatic phrases or jargon.
- Use the Importance: High and Return Receipt options sparingly.
- Even though email tends to be informal, keep in mind that it might be used as an exhibit in a judicial proceeding.
- Never insult or criticize anyone without giving them the opportunity to respond.
- Only capitalize words to highlight an important point, title or heading. Capitalizing whole words that are not titled is termed "shouting."

## Accuracy

- Read through your message again before sending—ask yourself what your reaction might be if you received your own message.
- Proofread and spell check messages.
- If you receive a message intended for another person, don't just ignore it; reply to the author with a short explanation, then delete the message.
- If you have sent an impulsive response, recognize and admit this quickly. Remember, unlike telephone and personal conversations that fade with time, impulsive email responses can sit in mailboxes, be printed out, circulated and acquire a level of importance that was never intended.

## 4 E. Guidelines for effective teleconferences

*“Always confirm meanings in your communications. Different cultural assumptions as to the meaning of a word, phrase, symbol, picture or agreement can cause confusion... When approaching a topic, or after consensus has been agreed upon a subject, always confirm that the general meaning has been agreed upon and understood. Where potential problems may exist as to interpretation, always simplify meanings. If the meeting will deal with complex language or concepts, consider forming a consensus on the meaning all participants will be comfortable with, then circulating them in advance of the meeting for review.”*

**- Neil Payne**, *Managing Director, Kwintessential, UK*

When working on projects to deliver more value, another key communications method is through teleconferences, often involving participants in remote locations, from a few countries. Running an effective teleconference across borders is a communications skill that can be very important in coordinating outside lawyers on a major global transaction or to manage an ACC Value Challenge project.

*“[Others on the teleconference] have no access to your nonverbal cues. They will lose place, lose focus and lose attention to the meeting. Virtually, you won’t notice if they don’t get you; they won’t tell you. So you have to be clearer—more explicit—the first time.”*

**- Daniel Mittleman**, *associate professor at the DePaul University School of Computer Science, Telecommunications and Information Systems,*

Meetings are hard enough to run when the participants are all in the same room. But any meeting you call today probably has at least one person attending who works in a remote location. You may be skilled at orchestrating an in-person meeting, but running an effective teleconference requires new skills.

Most of what you know as a manager remains relevant on a teleconference:

- You still need to start the meeting on time, define the meeting objectives, invite the right people, keep to a schedule, etc. If you have weak in-person meeting skills, teleconferences will exaggerate the weakness.
- Ask questions often to get confirmation that attendees are listening. You will have greater participation if you involve others from the start of the call. You can set this up in advance by appointing a few individuals to provide updates, and giving everyone on the call a task.
- It helps to send succinct information in advance of any meeting, and it can be critical for effective teleconferences. Ask people to have their materials available, and when reviewing, describe where you are on a particular page.
- Prepare ahead. Send out materials to review well in advance and provide clear direction on reviewing the items.
- Include an agenda (short and focused) and ground rules for each meeting, such as when to use the mute button, the keys this conference service uses to place the call on hold and so on.

The ground rules for your virtual meeting might include:

- Log on 15 minutes before the start of the meeting, since some online products require downloads and installation.
- Be aware of the background noise coming from your own office.
- State your name every time you speak.
- If you are leading the meeting, ask others to identify themselves.
- If you catch yourself multitasking, be responsible for your full participation.
- Turn off cell phones and PDAs.
- Avoid reading emails.

## 4 F. CASE EXAMPLE

### **Better communication on legal issues affecting businesses**

Will Harpur, Corporate Communications Manager, Wragge & Co LLP

#### *Situation*

The law isn't just for lawyers. Pensions trustees, landlords, financial advisers, marketing managers and many others need to know about the legal issues affecting their work. From an in-house lawyer with years of training or an human resources manager looking to understand the disability laws in several jurisdictions, we wanted to support our clients and prospects with jargon-free information written clearly.

#### *Goals/objectives*

We have long concluded that communicating effectively with clients, targets and other contacts is an essential part of the value we offer. Our goals were to live up to the firm's full-service message; to demonstrate our technical and service excellence; and to meet client demands for speed, quality and practicality.

#### *Roles and action steps*

Wragge & Co has developed and refined its AAA communications system, so that all the firm's Alert communications are consistent. This system provides a quick alert about the issues, practical actions to take and a more detailed analysis of the legal aspects. The receiver simply chooses which to view, whenever he/she wants to. The information is available via a link in the email and in the archive on our website.

**Alert** is used to bring something to a client/target's attention very quickly. It could be legal or a news development. Short, sweet and PDQ (pretty darn quickly) is the secret here.



**Analysis** is the tool used to provide more detailed intelligence on a relevant issue. But, this is what every firm offers. The added value comes by identifying which geographies, sectors and corporate functions within sectors are more affected by the development, and by giving specific examples in clear business communications (no legalese). **Action** is the more practical part that highlights what clients and contacts need to do, step by step. .

Forget paper, it's all done online-and it gives our clients and contacts the choice about whether to read on screen or print off for reading later.

The alerts are sent in English and, where relevant, with a 'click link' in French, German, Arabic and Chinese, relating to which of our international teams the AAA is for, so that recipients can view the alert in their own language.

## 4 G.Tools, templates and resources

### Meet.Talk.Act.

When the ACC Value Challenge was launched, we found that corporate counsel sometimes were hesitant to take the first step. They spent a lot of time preparing to organize a task force to decide what their strategy would be and then determine actions... and before they had gotten started, they were already distracted. As a result, ACC pioneers in the Value Challenge came up with simple ways to take the first step, without any preparation. If you aren't sure where to begin, give this a try. It starts with communication.

While the conversations will be different in every organization, and surely different in Amsterdam than in Atlanta, the approach should work in every culture. The important part is to *meet, talk (and, we hope, listen), and take action*.

In presenting the communications approach, ACC wrote:

We think one of the best ways to make meaningful and long-lasting breakthroughs is simple:

- Schedule a lunch with your three best clients, law firms, practice groups or individual lawyers.
- Talk openly about what changes can enhance the value of what both outside and inside counsel do, and in the process, listen carefully to the other side's interest, concerns and goals.
- Pick a couple of the ideas and try them out.

Some possible approaches include:

- fixed prices for tasks or specific matter;
- giving a firm a portfolio of work, such as all litigation worldwide to one law firm;
- bidding a portfolio of work and then working with the successful firm to bring the costs down further while letting the firm retain the benefits; and
- having law firm lawyers work on-site at the company.

There will be many good ideas. See what works and what doesn't. And then try scaling up the concepts that work well in your own area, and possibly, other areas of your company or firm.

## Step 1: Meet

The easiest way to start is for in-house counsel to pick their three best law firms or practice groups, and for outside counsel to do the same with their three best clients. Arrange a two-hour bag lunch with a single question for discussion.

### Question: Working together, how do we improve the value of legal services?

This is the same question that was discussed at a number of regional sessions prior to launching the ACC Value Challenge. The first hour typically was spent getting participants to realize that everything was open for discussion, on both sides. Once the ice was broken, the breakthroughs were dramatic.

## Step 2: Talk

Issues that might be considered in your discussions:

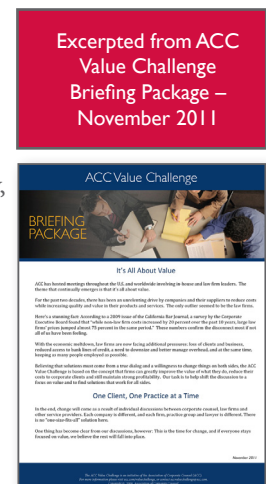
- How can we re-establish trust and improve our relationship, on both sides?
- How can we assure an adequate flow of work so that outside lawyers understand the client better and can be more efficient in what they do?
- How can we get junior lawyers better trained, priced at more reasonable levels, practicing law more on the front-line, and less likely to leave?
- How can we better budget and manage costs and staffing?
- How can we better institutionalize the relationships?
- How can we evaluate progress and performance?
- How can we create a culture of continuous improvement, on both sides?

## Step 3: Act

At the end of the meeting, agree to try out some of the ideas, even if on a small scale, and to meet regularly to assess these efforts.

Over time, you can see what works and what doesn't. You hopefully will find some approaches that achieve the following or similar results—and by the way, they really are not mutually exclusive:

- Improve the value of legal services.
- Decrease costs.
- Keep the client out of trouble.
- Maintain firm profitability.
- Develop approaches that can be scaled up and attempted in other areas.
- Improve training and career satisfaction, on both sides, and reduce attrition.



## PART II: VALUE LEVERS IN EUROPE

### Chapter 5. Measurement and Metrics

If laying out the path or plan is the first part of the equation to deliver value, then monitoring progress to stay on course (and adjusting as necessary) is the second important part. Quantitative measurements are new for many in-house lawyers in Europe. Until a few years ago, few in-house counsel were accustomed to preparing budgets for particular commercial transactions or projects. Becoming comfortable with measurements takes time, and often meets resistance in the early days.

**TIP:** Don't spend all your time searching for the perfect measures or metrics. They do not exist. It is better to find a few straightforward, easily understandable and reasonably reliable measures that are relatively easy to implement and can give you directional information that is useful.

While measurement and metrics can be particularly difficult across Europe with different accounting approaches and systems and varying ways of interpreting data, it is essential to have certain measures to understand how much more value you are adding. If the lines of business in Europe can use measurements effectively, the law department should be able to as well. Without the measurement, there is no proof of any progress. This aspect of strategic execution goes far beyond a one-time exercise. Measurement and metrics require continuous effort to:

- align law department structure with strategy;
- develop business skills and business language among lawyers (inside and outside counsel); and
- build law department credibility as a team that helps achieve business goals.

#### 5 A. Clarify current spending – internal and external

It can take a long time to understand what your organization is currently spending on legal resources, both internal and external. Most organizations have great difficulty accounting for the spending figure more than one year behind. But it is important to know where you stand now in order to know how far you've travelled toward your objective. Clarify current spending, both internal and external.

## 5 B. CASE EXAMPLE

### Taking Accountability for the Legal Budget

Sandra Mori, General Counsel - Europe Group, The Coca-Cola Company

Timeframe: started in 2010 and ongoing

#### *Situation*

Until 2010, the budget allocated to the legal team of The Coca-Cola Company in Europe was managed centrally by the general counsel (GC). All in-house lawyers managed law firms on a day-to-day basis, and all bills were paid by the European headquarters. In certain situations (e.g., big litigation, very specialized advice), lawyers asked the GC if they could incur the related expenses, and the GC authorized case-by-case. Travel budgets were treated in the same way; each in-house lawyer decided his/her own travel schedule, and costs were borne by the central budget. The in-house legal team did not see detailed budget projections or actuals.

#### *Goals/objectives*

As leader of the Europe legal group, my objective was to establish accountability and a tighter control on the budget. I wanted to make each in-house lawyer in the group fully responsible for expenses incurred to manage the legal support to his/her territory or function. Success would be measured by respecting the controllable elements of the budget allocated to Europe, and finishing the year within budget.

#### *Roles and action steps*

The Europe general counsel analyzed the legal budget (which had been flat unlike the last several years) and determined that it consisted of four components:

- people cost (non-controllable);
- other administrative cost (non-controllable);
- outside counsel (controllable); and
- travel (controllable)

I then decided to allocate a budget (formed solely by the controllable components) to each lawyer responsible for a geographic territory. Such budget was divided in legal fees, and entertainment costs. Amounts allocated to each responsible lawyer were calculated on the basis of previous year expenses (each lawyer provided rough calculation of legal fees and travel/entertainment costs during the previous three years, and then adjusted on the basis of “reasonability”). Functional lawyers (antitrust counsel, marketing counsel, office of the GC) were given the remaining budget after the above allocations, but we required advance approval of all expenditures by the GC (our rule for functional lawyers is to use outside counsel only when their functional expertise is not sufficient, and they tend to minimally use outside advisors). We named this the “GC office legal budget.”

A compulsory objective related to budget management and the allocated budget was included in the “Performance Plan” of each lawyer annually.

In our annual meetings from 2010, the in-house lawyers with budget responsibility reviewed the overall budget. Currency-neutral monthly reports showing actuals versus budget are created and circulated each month to the lawyers. In communications within Europe legal, we emphasize the importance of responsibly managing expenses and prioritizing matters.

### **Results**

The Coca-Cola legal group in Europe has been working within budget for the last three years (before 2010, it had been repeatedly over budget).

### **Obstacles**

- Changing the attitude of the in-house lawyers to work as “owners” of the budget allocated to them; and
- Working with the finance department to ensure that they consistently share the relevant information about the allocation of expenses.

### **Next steps**

We are still improving our ability to get access to cost and the forecasting of locally paid expenses (which are then recharged to the legal budget) to avoid hidden charges and surprises during the year and at year end/early January.

We are trying to find a method to evaluate the risk created by certain business or legal situations to better forecast which ones could create budget risks or opportunities (e.g., an issue that can evolve into significant litigation, a regulatory investigation, or a successful IP lawsuit where damages awarded go to increase the legal budget). We create an R & O (Risks & Opportunity) report every quarter.

## **5 C. Determine what will be measured and how**

By comparing metrics over time, a GC can demonstrate improvements in law department performance and cost savings. The following are some metrics that can help demonstrate value:

- reduction in litigation/ lawsuits filed against the company;
- reduction in regulatory investigations, violation, or sanctions;
- reduction in internal ethics and compliance issues or complaints;
- improved turnaround time for law department processes (e.g., faster contract review);
- improved terms (e.g., reduced liability or better prices) in vendor contract; and
- improved staff retention rates.

Excerpted from ACC  
Guide to Managing  
Outside Counsel – 2011



Guide to  
ACC Value Challenge  
Managing Outside Counsel

ACC  
Association of  
Corporate Counsel

For more details on how to implement and utilize metrics like those above, please see ACC's Leading Practices Profile, "Legal Department Leading Practices for Adding Value and Moving Beyond the Cost Center Model."

Therefore, from the outset, it is critical that corporate counsel be cognizant of the importance of demonstrating the law department's value, and be prepared to collect data to create their own company-specific metrics and estimates similar to those addressed above.

## 5 D. Individual in-house counsel performance metrics

- Amount of outside counsel spending managed per in-house lawyer;
- Percentage of matters handled internally, without any external counsel involvement (and value generated, i.e. what would external counsel have cost?);
- Percent of matters managed for which forecast updates were submitted on time;
- Actual spending vs. budget, by matter;
- Success in predicting total cost resolution range for a matter (e.g. compare Early Case Assessment projection to actual results);
- Percent of new outside counsel engagements priced on a value basis; and
- Other process goals include timely submission of:
  - monthly reports
  - early case assessment
  - trials
  - after action reviews/lessons learned.

In your law department, what are the individual performance metrics you would add or delete that relate to value?

### Adopting metrics to measure success

Increasingly, law departments are being asked to join other divisions within the company in assessing performance in objectively measurable ways. Sometimes, this involves creating "scorecards" to translate goals into measurable components intended to show the progress and increased productivity. Whether you are required to do this or not, the approaches below are helpful to assess various aspects of legal department operations and success. However, stay lean even in your choice of metrics and tracking, or you will create additional workload that may not justify the return. **A few solid metrics are usually enough.**

The sources of data for tracking metrics are varied, but often come from places like:

- matter management systems (3);
- ebilling systems;
- monthly reports showing number of new matter open, existing matters closed;
- spending reports from Accounting or Finance showing the amount of external fees and expenses incurred for various matters;

- detailed budget reports for various matters (showing how money was spent and on which types of activities);
- internal evaluations and scorecards concerning outside counsel's performance; and
- information from outside counsel.

These are several categories of metrics tracking effective legal department operations. Below is a list of those pertaining to outside counsel management. (See the appendix in Section VI (A) for a broader list of metrics for internal law department operations, including individual in-house counsel performance metrics.)

## 5 E. Outside counsel performance metrics

These metrics can be adapted to each jurisdiction based on the local legal practice, the way that law firms price their services in that market, and the particular work you are sending to external providers.

One of the most valuable uses of metrics and related analysis is determining how a particular figure fits within the context of other similar figures (e.g., comparative law firm costs to produce a certain piece of work). With targeted effort, you can tap several sources of information to produce this comparative assessment of metrics. First, look at your historical data. Some will be in useable format (either electronic or paper), while some may require a bit of “archaeology.” If it is too hard to re-create the past, you can implement ways to effectively gather the data going forward, including targeted benchmarking, reviewing available surveys and data, and asking outside counsel about information they have on the historical costs and complexity of the past issues, and how that compares against their other clients.

As we have mentioned above, it is important to select just a few metrics, and track them carefully. Too many measurements is a poor use of resources, not just due to the time involved to gather and distribute the data, but because of the confusion of having too many measures to follow.

To evaluate the effectiveness of outside counsel, the general counsel should develop and utilize a series of metrics that can assist in quantifying and comparing performance. These can be based on the following:

- actual spending vs. budget, by matter,
- average blended rate for all law firm lawyers who billed to the client (by matter, and across all matters – divide total fees by number of hours billed),
- percent of matters for which full year budget was submitted on time,
- percent of matters managed for which forecast updates were submitted on time,
- success in predicting total cost resolution range for a matter (e.g. compare Early Case Assessment projection to actual results),
- scores in qualitative measures assessed by in-house counsel, evaluating items such as creativity, responsiveness, efficiency, knowledge sharing, etc.,
- rate of overall success in achieving client goals (e.g., tracking numbers of “wins,” frequency with which outcomes within expected parameters are achieved, and/or frequency with which matter are resolved within particular timeframes, etc.),

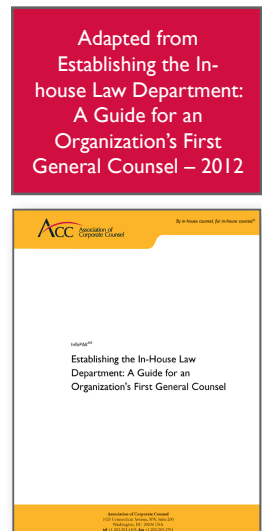
- percentage of matter for which a firm submitted a full-year budget on time,
- percentage and frequency of matters for which outside counsel submitted updates of expenditure forecasts,
- actual spending as a percentage of budgeted spending for particular matters,
- frequency with which outside counsel submit monthly reports, early case assessments, after action reviews/lessons learned, etc. for particular matters,
- degree to which a particular firm adheres to outside counsel guidelines and the outside counsel retention agreement,
- comparative costs (what Law firm A charges to produce a particular piece of work vs. what Law Firm B charges),
- average blended rate for all law firm lawyers who billed to the client (i.e., divide total fees by number of hours billed, for each matter and across all matters), and
- other process goals (i.e., goals relating to the process by which the work is completed), including timely completing or submission of:
  - Monthly reports
  - Early case assessments
  - After action reviews/ lessons learned.

#### External Spending – Portfolio Management Metrics

- percentage of external spending allocated among the top 10 billing firms,
- number of firms that bill 80 percent of the department’s external spending,
- percentage of law firms that provide value-based fee arrangements,
- percentage of external spending allocated to value-based fee arrangements,
- percentage of matters assigned via competitive bidding,
- percentage of dollars spent working with women or minority-owned firms/lawyers, and
- number of internal evaluations completed regarding outside counsel performance.

#### Frequency of measurement

The assessment period may vary depending upon what is being tracked and the need for sufficient time to “course correct.” For example, a law department might establish monthly tracking for items like actual spending vs. budgeted spending on key matter; quarterly tracking for items like number of outside counsel performance evaluations completed; and yearly tracking for items like amount of outside counsel spending managed per in-house lawyer.





## 5 F. CASE EXAMPLE

### Teaching corporate counsel Key Performance Indicator principles

Kevin Doolan, *Partner*, Eversheds

Timing: October 2010 to present, in the UK and Europe, and recently in the US

#### *Situation*

As a result of many conversations with corporate counsel internationally, Eversheds identified a genuine requirement for in-house counsel to talk facts and figures to their business leaders, particularly at a time of increased corporate cost-cutting. In particular, we found that corporate counsel need:

- to be able to prove, in hard numbers, the value that the in-house team provided to the business and to be able to justify every in-house position,
- to show that they were actively managing their external law firms driving best value and measuring performance, and
- to demonstrate that they were being proactive using numbers to show real improvements in performance, and to be able to show the cash effects of that work.

#### *Goals and measures*

Our objective was to provide training to support senior corporate counsel to:

1. Work with the in-house team to better use statistics to prove that their value considerably exceeds their cost.
2. Pass on Eversheds own experience of how best to manage an external law firms. In effect, we act as “poacher turned gamekeeper” to show clients the best measures and performance metrics that can be applied not just to our firm but to all external providers in order to make sure that costs are minimized and that best behaviour is rewarded, and to provide clear evidence of active provider management.
3. Show the savings being achieved from (2) above.
4. Use imaginative approaches in which our firm has been involved, to show corporate counsel how they can be proactive creating timetabled projects to deliver measurable savings and performance improvements, and to create funding for those projects out of the savings achieved.

#### *Roles and action steps*

Our partners with particular in-house experience deliver these tailored workshops on KPIs to in-house counsel. The program gives in-house counsel tools to enable them to design and implement metrics, systems and processes necessary to reduce costs and improve their own team’s efficiencies. The program teaches them how to use these metrics, systems and processes to develop a measurement framework to regularly assess external law firm performance and value.

The course is offered to groups of corporate counsel at Eversheds' offices and also as a tailored course to in-house legal teams at their own offices. Such clients have included a major bank and a large insurance company.

### **Results**

The key outputs that senior corporate counsel achieve with this knowledge and training include:

- Use of metrics as a means to defend the activity of their in-house team and to support arguments for additional resources;
- Tools for effectively managing law firms so the in-house team learns how to derive greater value from them;
- Aligning their goals and actions more closely to their businesses through the use of metrics;
- Inspiration to drive further transformation in the legal function, such as proactive cost-saving projects, or moving from a cost to a profit centre; and
- Evaluations are completed after each training. There is also a LinkedIn group that encourages GCs to feed back consistently and to share lessons learned and progress made with each other.

## **5 G. Tools, templates and resources**

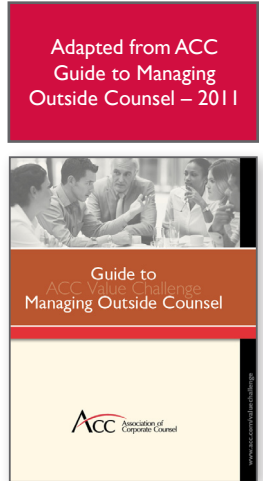
### **Appendix: Categories and examples of metrics**

#### **Law department metrics**

- Legal department spending as a percentage of revenue;
- Number of in-house lawyers per billion of revenue;
- Ratio of inside legal spending to external;
- Performance against budget;
- Recoveries gained;
- Liabilities averted;
- Value delivered;
- Winning percentage, charting wins and losses (measured against pre-defined success criteria from an Early Case Assessment exercise, for example);
- Extent of Knowledge Management utilization (showing re-use of existing work product to better manage demand);
- Number of initiatives successfully launched;
- Measuring utilization of temps or contract lawyers;
- Extent of off-shoring;
- In-sourcing success – money saved by bringing work in;
- Preventive efforts: number of training seminars delivered; and
- Number of training modules created and accessible via internet.

### Matter trends:

- Number of matters active;
- Number of matters open in the year;
- Number of matters closed in the year;
- Cycle time: average amount of time between opening and closing the matter; and
- Measuring milestone events reflecting activity levels (and cost per each):
  - Number of cases tried (or number of trial days);
  - Number of appeals brief / argued (and won);
  - Number of summary judgment motions filed (and won);
  - Number of deals closed;
  - Number of custodians whose documents were harvested for discovery; and
  - Number of gigabytes of documents processed in e-discovery.



The following resources elaborate further on the use of metrics to measure success.

## RESOURCES

“Viacom: Using Dashboard and Matter Management to Apply Business Rules to Outside Counsel Spend – Plus, Budget Training for Lawyers,” ACC Value Practice (Sept. 2010), available at [www.acc.com/legalresources/resource.cfm?show=1000941](http://www.acc.com/legalresources/resource.cfm?show=1000941)—(elaborates on use of real-time reports in managing matters and outside counsel).

“Assessing Legal Performance at Allstate – ‘Closing the Loop’ on Performance of Premier Law Firms and In-house Lawyers,” ACC Value Practice (Apr. 2009), available at [www.acc.com/legalresources/resource.cfm?show=189752](http://www.acc.com/legalresources/resource.cfm?show=189752) —describes use of annual surveys and related metrics to measure outside counsel and legal department performance.

“Outside Counsel Evaluations Lead to Enhanced Alignment and Value at Wal-Mart,” ACC Value Practice (Sept. 2008), available at [www.acc.com/legalresources/resource.cfm?show=39926](http://www.acc.com/legalresources/resource.cfm?show=39926) —discusses use of surveys and related metrics to measure outside counsel performance.

## PART II: VALUE LEVERS IN EUROPE

### Chapter 6. Effective Service Provider Relationships

#### 6 A. Optimize available resources: Effective approaches to manage external providers

Effectively managing legal service provider relationships involves strategic thinking, open and clear communications, advance planning, flexibility, teamwork, processes and project management, patience and trust. Previous chapters have addressed many of these underlying topics. There are certain steps in-house counsel in Europe can take to get their service providers aligned with them to derive greater value. As your law department takes action to deliver more value, effective service provider relationships require significant focus and will be one of the cornerstones of your success. Time spent up front with your service providers, and implementation of business processes to bring more discipline to matter management and the legal service relationship, will further enhance value.

**TIP:** One of the most important elements of an effective service provider relationship is consistency. All in-house lawyers within a team that are instructing external providers should try to use the same approach, with consistent objectives and processes. New approaches have to be repeated by the entire team in order to eventually take hold. Objectives and processes must be crystal clear. Frequent communications and straightforward processes will help you reinforce adherence to the agreed approach. Otherwise, your efforts may be disorganized and ineffective, with providers receiving mixed messages.

*“There is ongoing consolidation of providers in Europe, with more companies considering the one firm solution, and a number of companies that will use two or three firms per country. The decision-maker in the company for selecting the external firms is both legal and procurement. In-house lawyers decide which firms meet criteria in terms of coverage, capability and quality. Procurement deals with the process of running the RFP, comparing the offerings and negotiating the best value.”*

- Paul Smith, Partner, Eversheds

#### 6 B. Diagnostic tool: Decide which resource should handle a matter

##### The value matrix

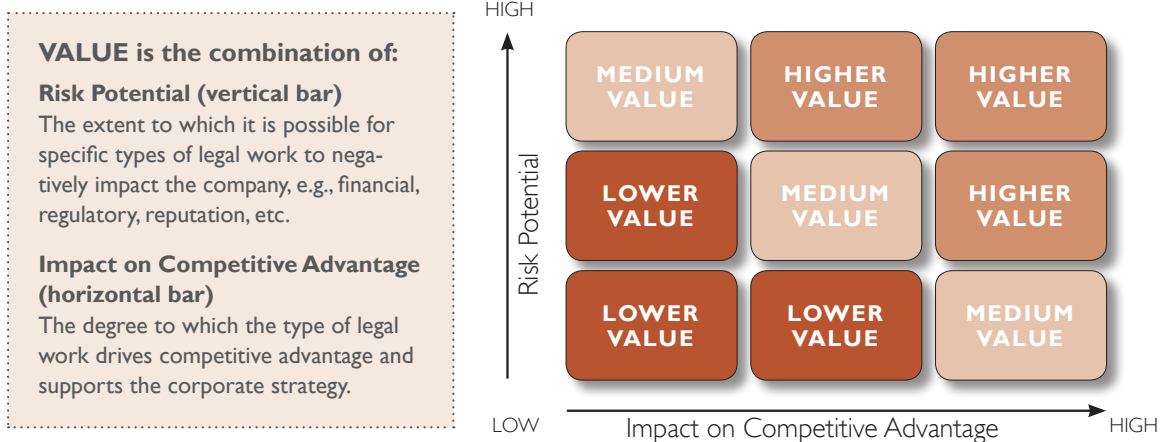
During the assessment phase, personnel are asked to value each category of work in terms of risk potential and competitive advantage. These terms are defined as follows:

**Risk potential** is the extent to which it is possible for specific types of legal work to negatively impact the company—financially, with respect to regulatory compliance, or by damaging the company’s reputation.

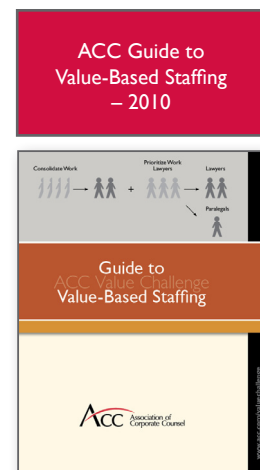
**Impact on competitive advantage** is the degree to which the type of legal work drives competitive advantage and supports the company strategy.

A value matrix using these two variables as axes is a useful means to identify the relative value placed on the work done by the department.

As can be seen in the matrix, work with both risk potential and a high impact on competitive advantage is perceived to have the highest value, while the lowest-value work has lower risk potential and strategic impact.



- Upper-right corner.** Matters that have a significant impact on the company’s competitive advantage, as well as high risk potential, are often better handled internally at a high level because of their strategic importance. Although some detail work might be delegated internally or externally, higher-level internal counsel need to work with the corporate development/M&A team to assess strategy, potential risk, and regulatory and legal issues.
- Lower-right corner.** The company will have to decide if it wants to handle lower risk matters that still have a high competitive advantage impact often, these are best handled internally, with occasional outside advice. The higher alignment with competitive advantage indicates that knowledge of the company’s business and perspectives are necessary. Because of the lower risk, however, the department should attempt to leverage its resources to handle those matters at a lower cost. Many types of contracts may fall in this range. They advance the company’s direction but may not bear a high risk because of lower dollar value or subject matter. Training internal business clients to handle these contracts themselves (with proper controls and escalation points) is one way to keep this work inside the company but at a lower cost.



- **Upper-left corner.** Matters with high risk potential but without significant strategic advantage are better handled by well-qualified outside experts, since they are not likely to move the company forward in its strategic plan. FSA investigations or major litigation, for example, may require a degree of expertise and have a high risk potential, but because they are related to past history, they are not always related to the company's current business objectives and strategy. The exception would be high-risk issues that could damage reputation.
- **Lower-left corner.** Finally, matters with low risk potential and low strategic value should be eliminated or reduced, automated, performed by others in the company, or outsourced. For example, simple human resources matters, such as background checks, do not need to be performed by the legal department.

**TIP:** Scoping facilitates the negotiation, development and implementation of Value-Based Fees, such as flat fees and retainers (whether or not combined with success fees.) Scope a matter or project carefully as part of the planning stage include who will do what, how much effort they will put into it, and what they will deliver. Developing the budget carefully will aid the negotiation process because it helps both the law department and outside counsel clarify the cost and the value of the work.

## 6 C. Basic practices in managing higher-value outside counsel relationships

### Define what you hope to accomplish

What are your main goals in partnering more effectively with outside counsel?

- Better outcomes by having a more knowledgeable team in place when matters arise
- Stronger work relationships with highly-motivated firms who already know your company, in-house legal team and operating procedures
- Improved preventative law efforts by teaming up with outside counsel proactively to better advise the business on how to mitigate risk (not just address issues after they arise)
- Reduced administrative burdens by training counsel up front on your operating procedures (e.g., billing guidelines), reducing the amount of time you have to spend correcting things later
- Greater efficiency and cost savings - from more effective fee structures when client and firm trust one another enough to commit to risk-sharing and value-based fee models that eschew the hourly rate approach

**TIP:** While it would be ideal to accomplish all of these at once, it is often best to focus on achieving a couple of key goals at the outset, then expanding from there.

### **Improve outside counsel's working knowledge of your business**

Information exchange - share with outside counsel key updates and reports from the business and the Legal department. These can be documents or presentations on:

- business performance (annual reports and SEC filings),
- product issues (marketed products or those in development), and
- strategic initiatives (to the extent these should be shared).

Increased interaction

- Invite some of your key outside counsel to join inside counsel on a tour of a manufacturing plant or other company facility.
- Include outside counsel at some of your periodic group/department meetings.

Annual preferred counsel meeting - consider inviting your key law firms to join members of the legal department to discuss key updates on the business, legal initiatives, the broader legal and regulatory environments, and inside/outside counsel operations.

### **Scope the assignment with your outside provider**

After you have outlined the scope of the matter, it is helpful to the final product to then involve the firm(s) being considered to perform the work in the scoping process. Doing this will produce greater “buy in” and commitment to project plans and budgets if the firm(s) ultimately assigned had a hand in crafting these plans.

Scoping and cost conversations with law firms often occur with multiple firms involved before one firm is assigned the matter, whether through a formal RFP or not. These discussions can validate basic assumptions and price points when multiple law firms independently gravitate around a similar set of activity assumptions and/or budget figures.

Even if the assignment is with an existing external provider with whom you may work day to day, it is still valuable to both client and provider to discuss scope at the start. The scoping process provides much more clarity about the assignment and desired outcomes.

### CHECKLIST: Define desired outcomes and value (to discuss internally and externally)

- What are the desired results — and for which stakeholders?
- What is a reasonable definition of success for this matter, based on what we know?
- Are there quantitative financial ranges, timeframes or other measureable outcomes that will define our success?
- If not, how can we arrive at a more specific, measurable definition of success?
- At which milestones in the matter/project should we meet and consider adjustments to our desired outcomes and success measures?
- What would the provider suggest as mechanisms or fee structures to tie part of compensation to outcomes delivered on this matter?
- What does the provider think are the most important stages in the matter/project budget and work plan, in order to stay on budget and schedule?

### CHECKLIST: What to discuss with your provider on scope of assignment

- Articulate the assignment or instruction.
- Describe the areas of the business, the geographies, and the particular internal and external stakeholders that this matter concerns.
- Identify what the provider is expected to deliver (opinions, research, memos, recommendation, brainstorming session on approach, etc.).
- Discuss the timeline in detail: phases and key deadlines for deliverables.
- Clarify information and analysis needs for the matter, including internal and external data.
- Provide names, titles and contact info for all key individuals involved in the matter, and define their roles.
- Confirm the key in-house counsel contact, contact info, and a back-up in-house lawyer.
- Identify other providers involved in the matter, if any, and their role.
- Define the financial value of the matter to the provider.
- Explain the perceived risk of the matter and ask for provider's views.
- Determine with the provider how to best allocate parts of the work to the in-house team.
- Ask the provider what tools will be deployed to increase efficiency and improve results.
- Ask the provider where in the matter there are other opportunities to reduce fees.
- Ask the provider to raise any questions that have not been covered.



## Strengthening preventive law and anticipatory efforts

Target specific issues that are important to your company, and collaborate with outside counsel to craft a series of training sessions. Examples include:

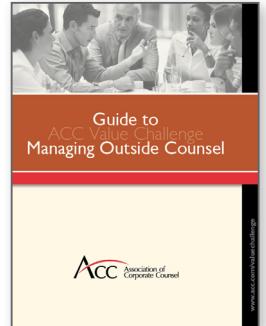
Hot topics and legal developments concerning:

- emerging trends in litigation (types of cases, plaintiff bar tactics),
- growing enforcement or regulatory actions from different agencies,
- recent judicial decisions and opinions, and their impact on defense strategies.

Training modules to help business people better perform their jobs, e.g.

- effective communications guidelines, and
- employment law training for HR Managers.

ACC Guide to Managing  
Outside Counsel – 2011



**TIP:** Preventive law efforts often need communications and information support to be effective. Include the following in your law department actions to provide updates to shape behavior for better results, as well as to help your external providers by providing opportunities for lawyers and practice teams who are interested in showing you what they can do, in the hopes that you will keep them in mind for the future.

- Document repository (e.g. organizational charts, legal department policies and procedures, list of corporate subsidiaries for litigation disclosure)
- “On-boarding” guide for external counsel who are new to the engagement team
- List of preferred vendors (court reporters, jury research firms etc.)
- Knowledge management tools to store and access work product

## 6 D. Prepare and communicate outside counsel guidelines

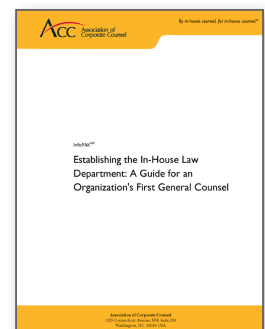
### Prepare outside counsel guidelines

A general counsel should draft a set of guidelines that govern retention of and relationship with outside counsel. These guidelines set out in clear terms how clients and/or law department staff should interact with outside counsel. Although a general counsel should draft guidelines adapted to the unique needs and culture of their respective clients, guidelines should generally address the following:

- **Engage with outside counsel** – The guidelines should limit who can engage outside counsel to those approved by the general counsel and restrict discussion of legal matters with outside counsel to law department lawyers.
- **Conflicts of interest** – A general counsel should develop a policy regarding outside counsel's representation of other clients with adverse interest.
- **Staffing matters** – The guidelines should govern the number of outside counsel staff members permitted to work on a particular legal matter and promote diversity among this staff.
- **Confidentiality** – The guidelines should also restrict the dissemination of nonpublic information.
- **Ethical conduct** – There should be a policy regarding the ethical expectation for both in-house lawyers and the outside counsel with whom they interact.
- **Liability insurance cover** – Depending on when the guidelines should require that outside counsel maintain liability insurance
- **Managing litigation** – A general counsel should lay down guidelines for file retention, discovery and early case assessment.
- **Invoicing** – There should be guidelines regarding invoicing procedures, budget considerations, requests for rate increases, reimbursement of expenses, non-billable time, etc.

Once completed, these guidelines should be sent both to company employees and outside counsel whom the company plans to retain for future legal matters. These guidelines should also accompany any future engagement letters retaining a firm for legal services. A general counsel should ask outside counsel to sign and return the guidelines within a reasonable timeframe.

Adapted from  
Establishing the In-house Law Department:  
A Guide for an  
Organization's First  
General Counsel – 2012



**TIP:** External counsel retention agreements should use your external counsel guidelines to govern engagements. They can be drafted into the regional agreements in the form of a letter to outside counsel and may contain the terms addressing.

- billing cycles and formats;
- project budgets;
- approval for change lawyers;
- limits on cost and travel expenses; and
- discount from standard hourly rates (e.g., for early payment).

## 6 E. CASE EXAMPLE

### Tailoring value-added services to clients' specific needs

Paul Hastings Europe, Bruno Cova, *Co-chair* Milan office

Timeframe: Ongoing (past 24 months)

#### *Situation*

In-house legal teams are extremely busy. They have limited time to approach their external legal providers about value-added services, and thus, often don't receive real benefit from services on offer. Through its global key client program in Europe and elsewhere, Paul Hastings lawyers proactively meet with clients to determine how to tailor value-added services in practical ways to meet their specific needs and priorities.

#### *Goals and measures*

The goal is to meet the client to build a menu of customized services designed for their specific needs. In addition to the classic value-added services such as secondments, we may offer:

- Brainstorming sessions on hot topics of client interest.
- Training (often involving partners from other jurisdictions, on topics such as listing in Hong Kong or New York stock exchanges).
- Telephone hotline advice from the firm on selected topics.
- Job placements and client-satisfaction meetings to determine service enhancements.
- We measure our success through client feedback, quality of ongoing work, and market reputation.

### ***Roles and actions***

Some specific examples of our tailored services include:

- Training sessions on European M&A in Asia involving partners from various European and Asian offices.
- Tailored meetings for key European clients with our Hong Kong and New York Capital Markets team.
- “Best practices” panel discussions for clients led by partners who were previously in in-house roles.
- Secondments in London, Milan, Frankfurt, and across other international offices for key clients.

### ***Results***

Following our discussions with clients, we have provided more tailored seminars, seconded more lawyers, and placed more of our people in in-house roles. Client satisfaction has improved, and our revenue with these clients has increased.

### ***Obstacles***

Since in-house lawyers are busy serving their clients, they often don't have time to discuss their specific needs with their law firm, so that we can tailor value-added services that would most benefit them. As a result, it is important for law firm providers to encourage dialog to understand client concerns and priorities, and proactively make recommendations.

### ***Next steps***

We regularly evaluate our value-added services through client feedback and by measuring the success of each service. We continually seek innovative approaches to value-added services and will continue to encourage discussions with clients about their needs, as well as to share recent services we've offered to other clients.

## 6 F. Tips, tools and resources

### RESOURCES

“Pfizer’s Legal Alliance Program: Collaboration and Focus on Relationships Produce Better Legal Outcomes and Cost Savings,” ACC Value Practice (March 2011), available at [www.acc.com/legalresources/resource.cfm?show=1279390](http://www.acc.com/legalresources/resource.cfm?show=1279390).

“Levi Strauss: Global Partnerships for Corporate, Commercial and Intellectual Property Work,” ACC Value Practice (March 2011), available at [www.acc.com/legalresources/resource.cfm?show=1279401](http://www.acc.com/legalresources/resource.cfm?show=1279401).

“How to Base a Partnering Program on Sound Principles,” ACC How To (Oct. 2008), available at [www.acc.com/legalresources/resource.cfm?show=56759](http://www.acc.com/legalresources/resource.cfm?show=56759).

## PART II: VALUE LEVERS IN EUROPE

### Chapter 7. Effective fee approaches – value-based fees and incentives

#### 7 A. Set the stage for effective fee arrangements with your providers

When you have implemented some of the ideas in Chapter 6 to improve management of service-provider relationships so that they are increasingly effective, you have the groundwork set to look at alternative fee arrangements and other incentives to manage costs of external providers. Every corporate law department that has been effective at reducing external legal costs through value-based fees will tell you that there are a few elements that are nearly always required, including:

- trust;
- existing relationship (e.g., you have worked together on at least a few matters);
- legal service provider has good working knowledge of your business;
- provider understands your law department strategy and objectives;
- provider has experience using budgets and project plans;
- good communication has been established among the in-house and outside team; and
- in-house counsel and outside provider regularly scope assignments together.

If you don't have a well-established working relationship, don't worry: you can begin briefing your provider on your legal function strategy and objectives while you define roles and responsibilities for employing value-based pricing.

An important note: Discounting of fees does not count as a value-based fee arrangement. While it can be a short-term tactic to reduce external legal costs, it makes no progress towards moving up the value chain and away from the billable-hour model.

**TIP:** One way to reduce external legal costs in a sustainable way is to conduct the analysis at the start to look at legal services delivery, knowledge management and budget. After determining a reasonable external budget, you can then work with a law firm to develop an approach to provide enhanced service and increase business-client satisfaction. Often, you can do this across many jurisdictions. Many external providers are willing to agree to a fixed fee for services within a pre-defined scope (usually based on type of work rather than number of hours). One such approach is described in the case example in 7C. In this case, legal work assigned to the firm that is not in the retainer scope receives a fixed fee quote, giving certainty of cost.

## 7 B. Define and scope: Clarifying roles, requirements and desired outcomes

As we have mentioned in general terms in Chapter 3, when it comes to value-based fee (VBF) projects, first, it is important to define the roles, requirements, objectives and desired outcomes. What's your precise definition of success-- in 12 months, in 24 months? What is your vision of success?

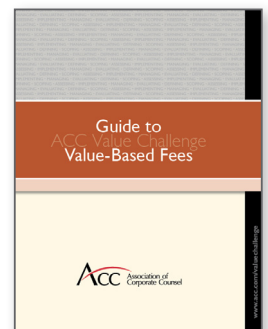
If your legal function is under budget pressure, make sure that your objectives are acceptable to company or legal function leadership before you get too far into this process. To complete the defining and scoping stages, you must make decisions on:

- areas of legal work you plan to cover in the VBF project;
- individuals inside and outside the company who will need to change their processes or approaches to realize your objectives; and
- measurements to demonstrate qualitative and quantitative progress in reaching objectives.

As you “drill down” to provide more detail on where there may be the best opportunities for value-based fees, the next step is scoping the work to identify what needs to be done to achieve that success.

When it comes to the budget, you no longer have to rely on a gut feeling that it “looks right.” Instead, an increased level of detail serves as a foundation for sound project management within legal matters. This may represent more administrative effort than some of us are accustomed to, but the two concepts are inextricably linked. You cannot achieve effective value-based fee structures without effective project management. If you don't know the various components of what you are buying, how do you know how much they should cost as a finished product?

Excerpted from  
ACC Guide to Value-  
Based Fees – 2010



**TIP:** Many in-house counsel already apply scoping and project management informally. Heightened success comes from doing it more rigorously so that segment of work can be tracked and adjusted to improve value. Internal resources to help support and manage this include paralegals, operations managers, project managers or support personnel from other functions, such as finance and procurement. External resources include six sigma experts, consultants and value-based fee specialists.

Many law firms are familiar with more advanced scoping and project management required for value-based billing, and some have dedicated pricing and project management experts in the firm. Clarifying scope and timing is necessary to reduce errors in fee estimates, which can be very risky for the law firm. For those who are newer to these practices, we suggest that you focus on benefits of stronger results, happier clients, better/more predictable staff deployment, and opportunity for more business.

## Get started

Where do you start in defining the scope of work to be performed for a particular matter? Existing information within your law department is a good place.

**Step 1 Existing Information:** If your department has handled several of these matters in recent years, with a good degree of similarity, then you have some reference points, including:

- the work to be performed,
- the size of the outside counsel team,
- type of resources required,
- how things unfold in terms of timing and duration,
- the sequence of steps in terms of project management, and
- the price, and all-in costs, for these services in the past.

Depending on how your department functions, you can gather this information by:

- speaking with your colleagues who have worked on these matters,
- mining technologies/databanks that have captured data that can be useful, and
- diving into summary documents that were used to manage those matters.

Examples of summary documents include status reports, budget templates, forecast updates, staffing plans, and project management documents. Documents can be requested from your law firm(s).

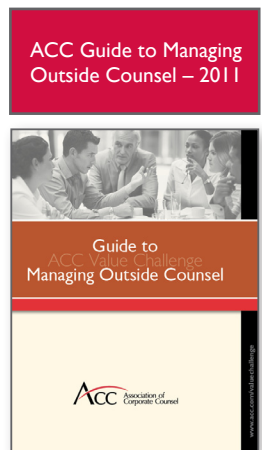


**TIP:** If you struggle to locate this information and you do not use summary management documents like those listed above, consider how you can improve your approach to gathering and keeping this information for future use. Ask outside counsel to provide this information in an effective way, and then store it so it can be retrieved later. And look at automated options that make the capture and future retrieval and manipulation of this information easier.

**Step 2 Tap the sources:** When facing a new matter without existing information, tap other sources – like other inside counsel – to discuss their experiences and expectations. You can benchmark value with other companies and ACC members. However, take care to discuss appropriately to avoid running afoul of either legal or professional concerns, such as antitrust and confidentiality rules and regulations. Benchmarking on total costs, for example, is better than on hourly rates.

**Step 3 Consider law firm input:** After you have gathered all of your existing sources of information about the scope of the matter, you must determine whether you are going to assign the matter to a law firm without further input on scope. This is a key decision. If you, as the client, already have the core information on scope of work to be performed, then you may determine that you do not need to involve law firm(s) in the scoping process. But if your efforts to scope that matter produce gaps in what exactly needs to be done, or if you are hiring a firm precisely because you have limited experience with this kind of work (and they've done it many times over for many different clients), then you should consider involving the firm(s) being considered to perform the work in the scoping process. Doing this will also produce greater “buy in” and commitment to project plans and budgets if the firm(s) ultimately assigned had a hand in crafting these plans.

From a client's perspective, effective scoping and cost conversations with law firms often occur when multiple firms are involved before the assigning decisions is made. In that context, there is greater validation of the assumptions and price points. For an illustrations of how this is effectively done, see resource below.



## M&A example

Clarifying the value-based fees approach for a merger or acquisition, for example, involves consideration of several major issues, such as:

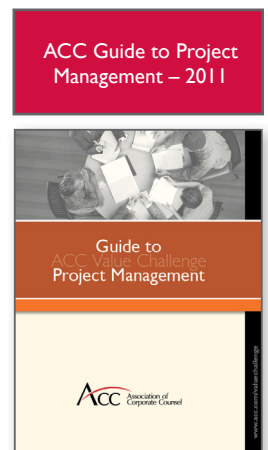
- What is the overall goal to be accomplished by the deal?
- What are the key constraints that will impact the deal?
- What are the key outputs?
- Who are the key players?
- What is the schedule?

Component factors of these issues might include the following:

- What will be the structure of the deal asset purchase? Stock purchase? Merger? What are the requirements specific to that structure?
- What are the laws governing the transaction (jurisdictional rules, antitrust, securities regulations, employment laws, industry regulations, etc.)? What agencies are implicated?
- What are the tax implications?
- What needs to be included in the letter of intent?
- What are the contingencies for completing the deal?
- What is the appropriate due diligence? What should it encompass and how extensive should it be?
- What are the financing issues?
- What disclosures are required and when (board, investors)?
- What ancillary agreements will be required in addition to the purchase agreements?
- What is our deadline for closing the deal?
- Who needs to be involved inside the department, inside the company, at law firms, banks, or elsewhere?

All of these factors play into determination of the scope of the project and the subsequent steps of developing the schedule and budget for the project as well as assigning roles and responsibilities.

As with all projects, communication plans are important for M&A projects. There are a number of disparate groups involved. M&A projects typically involve most corporate business groups, including finance, tax, HR, IT, compliance, audit and legal. Depending on the nature of the transaction, they also typically involve a number of outside parties such as the buyer's and seller's outside counsel, the buyer's lender and lender's counsel, an investment banker or broker, independent accounting and tax advisors, and potentially other service providers. The communication plan for an M&A project would need to take into consideration all these groups and specify which players should receive which communications and when. Because of the sensitive nature of the project, the plan would also need to specify who has access to what level of information.



## 7 C. Types of value-based fees

**TIP:** Good project management facilitates the negotiation and development of value-based fees, such as flat fees and retainers (whether or not combined with success fees or collars). Scoping a project as part of the planning stage including who will do what, how much effort they will put into it, and what they will deliver and carefully developing the budget aid the negotiation process because they help both the legal department and outside counsel clarify the cost and the value of the work.

The case example in Chapter 8, p. 76, focuses on value-based fees and a value-added delivery structure for Colt, a Europe-headquartered international company.

### Value-based fee options

**Fixed fees** are used to affix a price to a “deliverable” or a distinct piece of work, with all ancillary preparation and effort reflected in that price. Data can come from multiple sources (historical information, other items in the portfolio, bids or price quotes from existing firms or new firms). Litigation examples include paying X as the “all in” fee for a law firm to draft and argue a summary judgment motion, paying Y as the “all in” fee per deposition taken, and paying Z per page or per gigabyte for first level/responsiveness review on a document production. Transaction examples include paying X to produce initial draft of license agreement Y to negotiate outstanding issues with other side; and Z to finalize documents and conduct closing.

Not all matter or all deliverables are equally complex. As a result, what is ostensibly a similar piece of work—a summary judgment briefing and argument – may cost very different amounts across two different matters based on complexity. That is as it should be. Increasingly, sophisticated clients capturing their data over time to build fee schedules for pieces of work based on degrees of complexity. This enables them to compare prices of “like” projects or deliverables with similar complexity profiles to arrive at apples-to-apples assessments on cost. This requires an investment of time and effort, but the case studies below illustrate the larger benefits.

- **Advantages:** This approach accommodates uncertainty and provides flexibility in the future scope of work by pricing “units,” which allows for fee adjustments as the number of units rises or falls.
- **Drawbacks:** It takes time and effort to properly craft the numbers and adjust for changes in case activity.

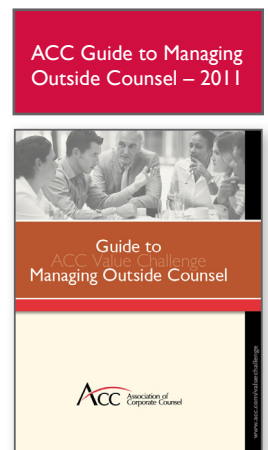
**Capped fees under an hourly rate approach** are commonly used to set a ceiling on what the client will pay the law firm on a particular matter or for a particular piece of work. Examples include payment of not more than X to prepare and argue a summary judgment motion, and payment of not more than Y to close a M&A transaction.

- Advantages: When executed properly, this approach resembles a fixed fee (discussed above), but in theory, the client pays less if the law firm bills fewer hours than anticipated, thus not reaching the cap.
- Drawbacks: While that sounds good, many observers have note that the interests remain unaligned. The law firm does not have the incentive to invest in approaches that would reduce the cost of producing that piece of work, because it does not share in any of the benefits for doing so. And since firms know they can bill until they reach the cap, many don't attempt to control their costs until they are approaching the limit. There is also a concern about overpaying if the client selects the wrong ceiling, not having done enough comparative assessment.
  - Still, this approach provides a stronger level of management as compared to unbridled hourly rate billing.

**Flat fee per month (or some other period)** is typically used to cover services delivered during the course of a specified period. Litigation examples include; monthly or quarterly flat fee to cover strategy or case management in the course of litigation and/or a “per diem” fee for trial. Other examples includes a monthly fee to address advice and counsel requests in addressing a particular issue of law. This resembles the “retainer” approach used more frequently in years past.

- Advantages: Provides certainty and sets the price based on the value to the client (and presumably based on the marker reference prices for what other law firms of similar quality would charge for this period).
- Drawbacks: Some have argued that efficiency incentives may not arise if the flat fee amount per period is not actively managed. Without further prodding from the client, does outside counsel really have the incentive to adopt process improvements to reduce the monthly figure and share so mot those savings with the client?

**Portfolio fixed fee.** Some clients have implemented a broader application of the fixed fee approach by assigning large portfolios of work to a single firm (or a given volume of work to a firm) for a fixed fee, often after a competitive bidding process.



## 7 D. Other approaches to reduce fees

Many corporate legal functions are looking for ways to reduce costs in advance of incurring legal fees, and are putting as much focus on prevention to reduce the caseload for external advisers as they are on the fee arrangements with external providers. The next case example shows how one law department has greatly reduced both skyrocketing litigation costs and outside counsel expense by introducing structural change and a consistent effort to work with business clients to reduce litigation through early settlement.

## 7 E. CASE EXAMPLE

### Lowering costs through structural change to reduce litigation

Pietro Galizzi and Francesco del Giudice, corporate law department, Saipem

#### *Situation*

Saipem is headquartered in Italy with 44,000 employees and revenues of approximately £13 billion. About 92 percent of revenues coming from outside of Italy, with major energy contracts in about 20 jurisdictions worldwide, including Azerbaijan, Croatia, Kazakhstan, Russia, Norway and the UK. There are six litigators in the head office legal function. From 2002, we concluded that litigation was far too costly. Arbitration proceedings often continued for years, with inadequate resolution. With support from our chief executive, we made it a goal to reduce litigation, with a conscious decision to try to settle every dispute. Making that happen required structural change and a series of efforts over time.

#### *Goals/objectives*

1. Reduce litigation costs.
2. Settle every dispute to avoid going to court.
3. Reduce the root causes which trigger disputes.

#### *Roles and action steps*

- In 2006, we moved the contract administration function under the legal function (today, there are about 190 contract administrators). The company liked Legal's goal to work more closely to the business through contract administrators, even though this increased the internal budget of the legal department (but not the one of the company, since those contract administrators already in the company, reporting to the business units) substantially.
- To settle without litigation, we needed to get info from the business unit as soon as possible, and then work with the business to agree on an appropriate settlement figure.
- Previously, contract administrators were decentralized: Part of each project team, they reported to business unit project managers and were often hired on a project basis. They had little connection to Saipem. We decided to create a contract administrative team to move between projects and carry their knowledge of the company and our procedural requirements.

- We train contract administrators on litigation, compliance, and legal issues in contract management and administration. Each of our 20 operations worldwide goes through training from an in-house counsel team travelling from Italy to give a three-day course. This is formally updated at least every two years, and ongoing training and communications are held, as well as in informal situations when litigators work with the business on local disputes.
- We instituted a process: Every time there is a claim of a certain importance, the contract administrator informs legal immediately so we can intervene at the very first step, facilitating early settlement.
- We involve outside lawyers when we're not sure about an aspect of local law. For example, in Kuwait recently, we needed an opinion, and in Kazakhstan, we often check with outside counsel to make sure the contract has not omitted a local law aspect. We generally approach settlement internally since we have highly qualified people inside to negotiate terms.
- We maintain a sort of handbook called "Golden Rules & Silver Guidelines," which covers legal aspects and guides business people in negotiating and executing contracts. We work side by side with them on this, constantly repeating the principles, to avoid litigation and comply with the law.
- A key part of reducing costly disputes is to ensure that our contract administrators proactively guide project managers in what procedural steps should be followed. If this is done well, there are few disputes because the contract is clearer from the start.

### **Results**

1. We reduced Saipem's legal expenses by 42 percent since 2006, almost completely through settling ahead of litigation and reducing disputes altogether. Our legal expenses, not including contract administration, were £5,5 million last year.
2. We have far less litigation— in the last three years, only 3 cases went to court.
3. We have far fewer claims, and virtually no disputes on contractual issues. Today's disputes are on technical issues.
4. Lawyers in Saipem are more gratified by this work; they feel closer to business people and deeply involved not advising what to do, helping decide what to do.

### **Obstacles**

At the beginning, many project managers didn't understand why they needed a good contract administrator; they felt it was their job. Yet often, they didn't read the contract.

It was a challenge to coordinate all the contract administrators, suddenly reporting to the legal department, so it took regular communication. Our time with them in-person helped a lot.

Integration of lawyers with our business operations is essential and ongoing, and we continually see positive results. We are always reminded that lawyers and engineers are different species; integration is a process that will never end.

### *Next steps*

For the future, it's important to keep up this good work. We have not had actual issues with compliance recently, and we are making every effort to avoid compliance disputes with regulators, which would be very demanding. A motivation for everything we do is to comply to avoid any material compliance litigation.

Clients have become more sophisticated about contracts and, we need to maintain the good quality of our contract administrators in order to avoid future problems and disputes. For instance, one new issue is the increasing price of materials. We immediately clarify materials prices and follow the right procedure to ask for relevant compensation, rather than wait until the end of the project to request revisions of contract prices.

## 7 F. Tools, templates and resources

### **Value-based fee matrix**

The table on the following pages lists common types of value-based fee arrangements, provides some examples of when they might be used and describes situations for which the fee structures may be ideally suited. This ACC Value-Based Fee Guide is evolving as practices evolve. If you have successfully implemented other value-based fee structures not listed below, please contact us at [accvaluechallenge@acc.com](mailto:accvaluechallenge@acc.com) so we may consider adding your practice to the list.

<b>VALUE-BASED FEE MATRIX **</b>			
<b>Type</b>	<b>Description</b>	<b>Example</b>	<b>Ideally Suited For</b>
Fixed Fee per Deliverable	Affixes an “all in” price for a distinct piece of work, encompassing all of the law firm’s ancillary preparation and effort.	<ul style="list-style-type: none"> <li>• Pay X for a law firm to draft and argue a summary judgment motion;</li> <li>• Pay Y per deposition taken;</li> <li>• In the transactions context, pay Z to produce an initial draft of a license agreement.</li> </ul>	Situations in which certain component pieces of work are distinct and measurable such that client and law firm can agree upon a workable fee schedule, even if the number of “units” of work may vary going forward.
Fixed Fee per Matter	Sets a fixed price for all legal work relating to a particular matter.	<ul style="list-style-type: none"> <li>• Pay X to handle a particular type of commercial real estate transaction;</li> <li>• Pay Y to handle the defense of a single-plaintiff employment litigation up to trial, with an additional fixed amount to try the case.</li> </ul>	Situations in which matter recurs in a defined and predictable way so that the client and firm can agree on a reasonable fixed fee to handle that matter, barring any unforeseen developments.
Capped Fee	Commonly used to set a ceiling on what the client will pay the law firm in a particular matter, or for a particular piece of work. Resembles a fixed fee, but with certain drawbacks (discussed in the “Assessing” section below).	<ul style="list-style-type: none"> <li>• Legal fees for this matter, in this calendar year, not to exceed X;</li> <li>• Fees for drafting and arguing this appeal not to exceed Y;</li> <li>• Fees to handle this transaction not to exceed Z.</li> </ul>	Situations in which the client is most comfortable with the hourly rate billing model and favors greater predictability (by capping fees on the high end) as opposed to lowering fees (by sharing with the law firm a portion of savings generated under fixed fees).
Flat Fee per Period	Typically covers distinct categories of services during the course of a specified period.	<ul style="list-style-type: none"> <li>• Monthly flat fee to cover advice and counsel requests on regulatory issues of a certain type;</li> <li>• All-in “per diem” fee for trial representation for whole trial team;</li> <li>• Monthly flat fee to handle administrative management during certain phases of litigation;</li> <li>• Quarterly flat fee for handling all intellectual property litigation of a certain type or in a certain area;</li> <li>• Quarterly flat fee for handling a certain volume of commercial agreements.</li> </ul>	Situations in which distinct pieces of work need to be performed on a recurring basis, and the client wants to create an economic incentive for the law firm to staff and perform the work more efficiently (i.e., reducing its own cost to increase its margin).



Type	Description	Example	Ideally Suited For
Portfolio Fixed Fee	Represents a broader application of the fixed fee approach by assigning a large portfolio of work to a single firm for a fixed fee, usually after a competitive bidding process. Duration can vary, but generally a multi-year term (2 or 3-years) is common; payment schedule may be monthly, quarterly or on another set period.	<ul style="list-style-type: none"> <li>• All employment litigation for a fee of X;</li> <li>• All product liability litigation of a certain type for a fee of Y;</li> <li>• All transactions of a certain type for a fee of Z;</li> <li>• All securities portfolio filings for a fee of XX.</li> </ul>	Situations in which a group of matters is sufficiently similar, recurring and predictable so as to lend itself to relatively consistent year-over-year patterns in terms of activity and fees.
Per Capita Fee/ “Ad Agency” Model	Fixes a set price to “purchase” on a discounted basis the full-time or half-time services of a certain person or team, who then produces the work required.	For the coming year, pay X to purchase 50 percent of the billable hours for lawyers 1, 2 and 3 to work exclusively on this client’s identified matters.	Situations in which a client wants particular outside lawyer(s) to be available and the law firm is willing to provide a discount in exchange for the certainty of revenue in advance and the volume of work is sufficiently predictable so as to keep these folks busy.
Incentives/ Performance-based Hold Back/Success Fees	Aligns interests by tying a portion of law firm compensation to outcomes achieved. (Can be used in conjunction with any of the value-based fee options described above.)	<ul style="list-style-type: none"> <li>• Percentage (e.g., 20 percent or some other number) of fees billed will be set aside by client and paid to the law firm subject to a multiplier (e.g., 0, 1, 2) depending upon the extent of success achieved (e.g., win a motion to dismiss, win a jury verdict, resolve a matter below a specified amount, close a deal by X date, etc.);</li> <li>• Without a holdback, opportunity for bonus based on results achieved and value delivered (e.g., resolve a matter below a specified amount, close a deal by X date, reduce number of new cases in litigation portfolio by certain percentage, etc.). Bonus could be calculated based on some portion of the costs avoided or value delivered.</li> </ul>	Situations in which the client is able to define success (entirely or in part) according to objectively measurable markers that the law firm can help attain via strong performance.

Pure Contingency	Law firm compensation depends entirely upon achieving certain outcomes.	<ul style="list-style-type: none"> <li>• Law firm fee is equivalent to X percent of the client's recoveries in a particular matter;</li> <li>• Reverse contingency can also apply where, e.g., defense law firm gets paid only if it wins a dismissal or jury verdict.</li> </ul>	Situations in which client seeks recovery and/or is cash-strapped and is therefore willing to forego a larger portion of its upside stake in exchange for protection on the downside (i.e., pay large fee for a win and no fee for a loss). This is higher risk and higher reward for the law firm.
Hybrid	Combination of one or more of the above approaches on a given matter or for a portfolio.	Flat fee for handling litigation, plus per diem for trial and success bonus for outcome.	Situations where client and firm wish to be flexible to address various touch points differently and reward results.

*\*\*This matrix does not include certain approaches that are not typically considered value-based fee structures (but which some may still use and find helpful on their own or in conjunction with these value-based fee approaches), including discounts off hourly rates, tiered volume discounts, and use of blended hourly rates. While helpful in part, none of these fit the definition of a value-based fee structure as a construct that assesses the value of the service from the client's perspective. This ACC Value-Based Fee Guide is evolving as practices evolve. If you have successfully implemented other value-based fee structures not listed below, please contact us at [accvaluechallenge@acc.com](mailto:accvaluechallenge@acc.com) so we may consider adding your practice to the list.*

## ACC RESOURCES: SCOPE

Sample Project Definition Template – Prudential Financial  
[www.acc.com/legalresources/resource.cfm?show=1220472](http://www.acc.com/legalresources/resource.cfm?show=1220472)

Sample DONE Statement – Prudential Financial  
[www.acc.com/legalresources/resource.cfm?show=1220539](http://www.acc.com/legalresources/resource.cfm?show=1220539)

Sample DONE Statement Challenge – Prudential Financial  
[www.acc.com/legalresources/resource.cfm?show=1220674](http://www.acc.com/legalresources/resource.cfm?show=1220674)

## CASE STUDIES & ACC RESOURCES

ACC Value Practice: “Clorox: Value Matrix for Intellectual Property Matters—Alternative Fee Structures Based on Level of Difficulty, Staffing Mix and Billing Guidelines and Informal Training.” (Illustrates the use of capped fees of varying amounts based on complexity of underlying work.) [www.acc.com/legalresources/resource.cfm?show=458576](http://www.acc.com/legalresources/resource.cfm?show=458576)

## ACC RESOURCES: BUDGET

Sample Case Budget Template

[www.acc.com/legalresources/resource.cfm?show=743131](http://www.acc.com/legalresources/resource.cfm?show=743131)

“How to Improve Collaborative Budgeting”

[www.acc.com/legalresources/resource.cfm?show=40255](http://www.acc.com/legalresources/resource.cfm?show=40255)

“How to Prepare a Litigation Plan and Budget”

[www.acc.com/legalresources/resource.cfm?show=743311](http://www.acc.com/legalresources/resource.cfm?show=743311)

ACC Resources Project Plan

“Outside Counsel ... Project Management for Successful Value-Based Relationships”

[www.acc.com/legalresources/resource.cfm?show=1238727](http://www.acc.com/legalresources/resource.cfm?show=1238727)

ACC Resources: Value-Based Fees

“ACC Value-Based Fee Guide” (July 2010)

[www.acc.com/value-based-fee-guide](http://www.acc.com/value-based-fee-guide)

## CASE STUDIES AND ACC RESOURCES

ACC Value Practice: “De-constructing Legal Services—Calculating Unit Costs & Component-Based Pricing Structures - Johnson & Johnson’s Approach to Alternative Fees”

[www.acc.com/legalresources/resource.cfm?show=738996](http://www.acc.com/legalresources/resource.cfm?show=738996)

ACC Value Practice: “Confluence Law Partners: Deconstructing IP Litigation Matters”

[www.acc.com/legalresources/resource.cfm?show=379009](http://www.acc.com/legalresources/resource.cfm?show=379009)

ACC Value Practice: “Aligning the Interests of Client and Firm in Complex Litigation and Complex Transactions- Practices Implemented by Womble Carlyle Sandridge & Rice”

[www.acc.com/legalresources/resource.cfm?show=750208](http://www.acc.com/legalresources/resource.cfm?show=750208)

ACC Value Practice: “Class Action Defense Via Flat Fees & Performance Incentives . . . Nationwide Insurance and Fowler White’s Different Approach”

[www.acc.com/legalresources/resource.cfm?show=742577](http://www.acc.com/legalresources/resource.cfm?show=742577)

## PART II: VALUE LEVERS IN EUROPE

### Chapter 8. Advancing in Your Journey to Higher Value

According to the *WLG Global Agenda study* referenced in Chapters 1 and 2, more than half of the 123 Europe-based senior counsel responding said that they have used the following strategies to deliver greater value to their organizations:

- a) **more commercial/business skills training for the in-house team (56 percent);**
- b) **expanded training of business people in the application of the law (55 percent);**
- c) **taken a commercial lead on strategic projects (50 percent).**

Additionally, the study found that “improving or reengineering legal function processes and/or workflows” has been the most helpful initiative for European corporate counsel to increase efficiency and respond to growing demands with limited resources.

It is clear that in-house counsel are trying to change the value game, and that they are making progress. The tools of reengineering legal function processes and workflows can be sophisticated. This is where those who have implemented many of the approaches discussed in previous chapters want to now focus. Along the journey to get higher value externally and internally, knowledge management, process management and project management play an important part.

All of these disciplines connect to the overall goal of better integration with the business, and that involves understanding how your various stakeholders recognize and appreciate the legal function's value.

This is the topic of a late-2011 survey and discussion paper by law firm Nabarro Nathanson. The firm interviewed more than 100 general counsel and other senior lawyers to understand the factors that contribute most to how the business perceives the value of the legal function. The report, called *General Counsel: Vague about Value* (available to read or download, see link below ) uses the diagram below to introduce the concept of a “value pyramid” for the in-house legal function. It divides tasks into four levels, according to the value they provide for the business.

#### Reference:

[www.nabarro.com/Services-Sectors/Other-Services/General-Counsel](http://www.nabarro.com/Services-Sectors/Other-Services/General-Counsel)

## General Counsel Value Pyramid



The Value Pyramid was devised by UK law firm Nabarro in two reports focusing on GCs entitled *General Counsel: vague about value?* and *From in-house lawyer to business counsel*.

From our perspective, the ACC Value Challenge in Europe must overlay onto this pyramid the objective and perceived value of containing costs, since it is such a high priority for corporate counsel in Europe and around the world (as outlined in Chapter 2).

The most sophisticated areas of the ACC Value Challenge come at the higher levels of this pyramid applying process management, project management and knowledge management to complex problem solving, negotiating significant deals and contracts, managing crises, and influencing the board. That is the focus of this chapter.

*"If I were a general counsel today, I would align my resources to the risk profile of my corporation. Assuming I have a limited budget, I would invest according to the major legal risks the organization faces, by topic and geography. Most listed companies' boards are required to assess risks formally—the GC must be in a position to report how he/she is supporting mitigation of those risks.*

*If I know that I have a \$10 million budget, I will look at those risks and allocate my resources in the best possible way, negotiating the best price at each step. Every year, a certain percent of outside spend is preventing (training, auditing compliance, contracts, standard clauses) and those are predictable expenses. Some transactions and accidents or surprises are unpredictable, so money needs to be aside to cover that."*

**- Former General Counsel, Europe 500 company**

## 8 A. Process improvement

**TIP:** If the law department doesn't have trained project managers, consider looking to other corporate groups for project management resources and tools. Other departments may have the following resources:

- IT resources
- Quality Control systems
- Six Sigma programs
- Process Improvement programs

## 8 B. CASE EXAMPLE

### BT, Best Sourcing – Best Value

Chris Fowler and David Gribble, BT Global Services UK Legal Team

Timeframe: 2011 to present

#### *Situation*

Throughout BT Legal, we have been working to optimize internal and external legal spend overall, use our in-house legal team more efficiently and move team members up the value chain. Through a detailed study in our UK Legal team (commercial transactions), we found that more than half of our work was on low-complexity transactions/activities with revenues risks under £10m, and less than 20 percent of all work was on high complexity/higher risk work with revenues/risks over £50m. We wanted to shift our legal team's focus to support internal clients on higher value/risk work.

Our time and motion study asked:

1. What specific tasks are team members doing (e.g., drafting, negotiating, administration, etc.)?
2. Are they doing it efficiently?
3. Are there efficiency opportunities?
4. Is it the right structure?

We decided to increase use of offshore legal process outsourcer United Lex (whom we had worked with since 2010) for simpler repetitive tasks, in order to free up our in-house lawyers resource for higher complexity, risk and value work. To reduce costs, we wanted to limit use of outside counsel either to non-routine specialist advice or to very high-value/high-risk work.

#### *Goals and Objectives*

Our goal was to increase total legal value by a stretch target of 20 percent in 12 months (fiscal year 2011-12), using a set of “best-sourcing” initiatives, tracking demand and ensuring the optimal blend of off-shore, onshore and external spend.

We measure our progress by “Value Tracking.” We calculated average hourly costs for our BT legal team (based on internal costs), United Lex and external law firms. Using time-keeping for each resource category, we track monthly the costs for each type of provider, and produce a monthly aggregated “Legal Value Index.”

### ***Roles and action steps***

1. We have involved everyone in the UK legal team in this effort, to arrive at and implement our approach and track progress. We’ve connected project goals to individual objectives, incentives and bonuses.
2. We established a “legal front door,” managed by United Lex, where all appropriate requests for legal work must be submitted. Using an agreed decision matrix, United Lex triage the work based on its nature and complexity, then either perform the work themselves, or pass it to the UK legal team. This ensures high-value/complex work is directed to higher cost/skilled UK legal resource. Currently, about a third of appropriate work requests from the internal client are being handled by United Lex. We incentivized our own staff to produce playbooks that systemized our approach to repeatable tasks (such as the negotiation of basic agreements) and give United Lex a quality framework to operate within which is consistent with BT’s corporate policies.
3. We expanded the number of tasks performed by United Lex, gave them extra training and introduced quality checks on their work.
4. Communications and reporting: This initiative forms part of our overall Legal Strategy, which is communicated regularly to the whole legal team (e.g., through regular strategy days and monthly updates). This helps our lawyers understand and feel committed to our legal value aims, as well as driving them up the value chain and offering them greater scope for development and career progression.

### ***Results***

After 12 months, we have been very satisfied with our result of increasing legal value by 15 percent, and are on track for further increases.

Nearly one third of all requests for legal support are being handled by United Lex, enabling us to shift a number of BT legal professionals to growth areas where we require support. We have reduced outside counsel spend on commercial matters, which our internal team are better placed to deal with. Our legal team is happy to be working closer to internal clients on higher value/risk transactions. We now have an evaluation framework to serve as the basis for future initiatives.

### ***Obstacles***

Initially, the biggest challenge was taking the time to clearly understand the issues. There is an initial challenge to put work that has traditionally been done by the in-house legal team to an LPO. This requires a clear process, as well as the understanding of the legal team.

After deciding the right-sourcing steps we wanted to take, it was challenging to establish the construct for measuring our progress—what we call Value Tracking and the Legal Value Index.

Finally, the training and monitoring to ensure that work outsourced to United Lex consistently met our standards was challenging. Turnover tends to be higher in LPOs than in an in-house team. United Lex have helped us to put in place quality control measures, and to develop processes for repeatability and reliability.

### *Next steps*

After the success of this approach in the UK commercial team, we have now expanded it to the procurement team. A legal front door for procurement was introduced in November 2011. As a result, 80 percent of general, low-level legal enquiries are now dealt with directly by UnitedLex, freeing up about 20 percent more capacity for BT's own procurement lawyers to pursue higher complexity/value work. We are now looking at how we can increase take-up of an LPO provider's services in non-English speaking jurisdictions we operate in, e.g., by making additional language capabilities available.

We are looking to broaden the scope of United Lex's role as our playbooks extend into more interactive areas (such as flow down to suppliers) which will help drive a single way of working internally and deliver a comprehensive repeatable methodology that ensures the on-shore in-house team can remain focused on high-value/high-risk activities but supported by an underlying repeatable methodology for using off shore/LPO providers.

## 8 C. Project management

### **Benefits of project management**

Project management has a number of benefits. By creating a disciplined approach to legal work, project management results in improved use of resources and improved performance against budgets. Because tasks are clearly assigned, it reduces duplication of effort. The existence of a defined, detailed plan provides the context for team members to understand expectations and outcomes.

Ultimately, project management results in more effective planning, cost control, resource allocation and appropriate risk management throughout the duration of a case/project, giving project team members structured tools to make deliberate, fact-based decisions.



<b>Scope</b>	Determine the goals and deliverables for the project.
<b>Schedule/people/budget</b>	Establish the parameters within which project will be accomplished.
<b>Conduct of legal matter</b>	Carry out the project within the established parameters, making adjustments as required.
<b>Review</b>	Assess the project results and lessons learned after its completion.

### **Role of project manager**

The project manager can serve as both a facilitator and a decision-maker during the course of the project. The legal project manager's role includes the following:

- Upfront planning to define and gain consensus on the scope and required effort.
- Coordinating resources human, financial and other.
- Establishing communication mechanisms.
- Identifying interdependencies between tasks and resources.
- Managing the work plan and updates.
- Connecting people with questions to appropriate people with answers.
- Balancing project scope, time, people and cost to manage quality and hedge risk.

Who should perform this role in legal project management will vary depending on the organization. Whether the project manager should be a lawyer is an open question. It can be argued that a lawyer's understanding of the matter's substantive requirements and issues can be beneficial when making judgment calls and balancing priorities. However, most lawyers are not trained in project management, and arguably, many are predisposed to focus more on exhaustively undertaking the scope of the project rather than being attuned to related effects on budget, timing or staffing. Law departments sometimes ask their outside counsel to undertake project management. There may be questions about how that service is integrated into the billing arrangement, particularly if the project manager is not a lawyer. As an option, the law department's operations group can provide project management capabilities and resources. If the law department doesn't have a dedicated operations group, it can look outside the department or tap an existing department member. Regardless of who undertakes the project management, however, it is best to define the project manager role on each case and project instead of simply assuming that someone will take it on.

## When to initiate a project

Once legal departments have an understanding of project management techniques, ideally they should follow general project management principles when conducting all their work. A defined, formal project, however, is particularly appropriate for work efforts that have greater scope, are longer term, higher cost, involve a number of stakeholders both inside and outside the department, or involve considerable tracking of information. Depending on how the department defines a “matter,” it may be appropriate to initiate a project whenever a “matter” is initiated that is expected to involve a certain level of spend.

## Questions to ask

- What are the laws governing the transaction (jurisdictional rules, antitrust, securities regulations, employment laws, industry regulations, etc.)?
- What agencies are implicated?
- What are the tax implications?
- What needs to be included in the letter of intent?
- What are the contingencies for completing the deal?
- What is the appropriate due diligence? What should it encompass and how extensive should it be?
- What are the financing issues?
- What disclosures are required and when (board, investors)?
- What ancillary agreements will be required in addition to the purchase agreement?
- What is our deadline for closing the deal?
- Who needs to be involved inside the department, inside the company, at law firms, banks, or elsewhere?

All of these factors play into determination of the scope of the project the subsequent steps of developing the schedule and budget for the project, and assigning roles and responsibilities.



## Roles and responsibilities

Developing a project plan also includes determining who will be responsible for completing specific tasks and activities. Take into consideration all of the people who could contribute to the project: lawyers, paralegals, support staff, other resources within the company, outside counsel and vendors.

**TIP:** When assigning roles and responsibilities, many project managers find it helpful to use the “RACI” diagram. A RACI diagram describes the roles of various teams or people involved in delivering a project. The RACI diagram provides structure and clarity to cross-functional roles on a project.

The RACI diagram splits tasks into four key responsibilities, which are then assigned to different roles in the project or process. These responsibility types make up the acronym RACI

**Responsible:** Those who do work to achieve the task. There can be multiple responsible persons or groups.

**Accountable:** The resources ultimately answerable for the correct and thorough completion of the task. There should be exactly one “A” (accountable person) specified for each task.

**Consulted:** Those whose opinions are sought. Consulting implies a two-way communication.

**Informed:** Those who are kept up-to-date on progress of the progress. These are recipients of one-way communication.

**Roles and Responsibilities**

	Task Description	Person A	Person B	Person C	Person D
T a s k s			R	A	R
			A	R	R
			R	A	R
			R	R	A
		A	C	I	I
			A	I	I
			R	R	A
		R	R	R	A
		A	I	I	I

(R) Responsible  
(A) Accountable  
(C) Consulted  
(I) Informed

## 8 D. Knowledge and data management

We define knowledge management in the glossary as: strategies and processes designed to identify, capture, structure, leverage and share an organization's intellectual assets (information, documents, experience, precedents, etc.), with the goal of higher performance, productivity and competitiveness.

The globalization of business and the increased complexity of corporate products, services and business structures raise the importance of effective knowledge management. Corporate law departments operating across many borders must share information and knowledge effectively, since it is simply too expensive and slow to reinvent the wheel every time.

Knowledge management also involves mining data gathered for other purposes (e.g., compliance reporting or accounting) to make wise business decisions, and to spot potential legal and compliance risks.

The following case example has the attributes of a value-based fee arrangement and also the benefit of enhanced knowledge management.

## 8 E. CASE EXAMPLE

### Service and knowledge management to reduce costs and improve client satisfaction

Peter Strivens and Christina Demetriades, Partners, Baker & McKenzie

Timeframe: since January 2012

#### *Situation*

After analyzing historic legal spend for commercial services across this FTSE 250 company's operating countries, the general counsel determined a target fixed fee, ensuring, as a minimum, that costs remained flat year on year whilst improving quality, accessibility and availability of external legal resource.

The in-house team felt it was not the most efficient or high-quality approach to have multiple unconnected firms delivering advice across 13 jurisdictions. The legal function wanted to have single points of contact and remove the process of per-matter-spend approvals, so that legal advice would be more accessible and the function could respond more quickly to internal business clients.

#### *Goals/objectives*

1. Strengthen Colt's legal capabilities by creating a pan-European "virtual legal team" (across 13 jurisdictions) to complement the Colt's internal team under a single coherent model of law firm engagement.
2. Improve efficiency and consistency in our legal services delivery.
3. Have a clear legal budget for this area of work, not subject to retroactive change.

### ***Roles and action steps***

1. The legal team at Colt worked with Baker & McKenzie to develop and implement a model that captures in-depth knowledge of their business drivers and uses these insights to drive efficiency, consistency and better business outcomes.
2. Matters are raised and tracked via a customer portal, which, in turn, provides matter-level reporting revealing how we use the service, which practice areas and jurisdictions our requests for advice tend to focus on and the distribution of demand for advice between our internal business divisions.
3. Services within a pre-defined scope (type of work rather than number of hours) are provided by Baker & McKenzie under a fixed-fee arrangement. The fee is subject to annual review but not retrospective adjustment thus providing certainty of cost for the entire budget period.
4. Legal work assigned to the firm that is not in the retainer scope is subject to a fixed fee quote, thus giving certainty of cost for such matters.
5. Lawyers across the Colt legal team are free to instruct Baker & McKenzie on all “in-scope” matters as they arise. The engagement covers sales, purchasing and day-to-day corporate and regulatory matters in the UK, France, Ireland, Spain, Portugal, Italy, Austria, Switzerland, Germany, Netherlands, Denmark, Sweden and Belgium.

### ***Results***

The engagement has enabled us to help fulfill Colt’s objective of managing costs and integrating its external advisers into the Colt business, creating a virtual extended legal team who truly understand their business.

The arrangement is based on a fixed fee for all commercial services needs across 13 jurisdictions, which gives the business desired cost certainty and encourages the service to be used more widely. The arrangement has been running since 1 January 2012 and is for a minimum of three years.

*“Baker & McKenzie demonstrated that it is able to meet our needs for commercial industry-aware legal advice across all our regions of operation and has developed an excellent engagement model to work with our world-class in-house team. I am delighted with the innovation it has demonstrated and with the commitment and enthusiasm the firm brings to our relationship, and I believe it will bring significant value to Colt’s business.”*

**- Robin Saphra, General Counsel, Colt International**

## Legal project management best practices

Legal project management is a disciplined approach to legal work, resulting in improved use of resources and improved performance against budgets. Below, we share best practices to ensure that the law department’s project management program is as effective a possible.

- Define criteria for when formal project management is expected to avoid just large “ticket” items being formally project managed.
- Make project management an explicit process within the expected case management activities.
- Conduct project management reviews independent from case strategy reviews.
- Define the project management role instead of assuming someone will take it on .
- Define project management as job expectation and include it in performance evaluations.
- Tailor tools to specific practice/matter type need, but make them flexible enough to be adapted and changed to meet the program’s needs as requirements change or grow.
- Provide training that encompasses initial guidance, hands-on work, as well as specific project and ongoing support. Use testing and refresher training to keep skills sharp.

Engaging in these practices will help the law department make project management an inherent part of the department culture.

## 8 F. Tools, templates and resources

**TIP:** Project management requires specific tools, but often, existing law department tools can be utilized. The table below lists some of the necessary project management tools along with existing law department systems that can be used to develop them.

Component	PM Tools	Existing Law Department Systems
Scope	Project Charter	
Task and Activities	Work Plan	Excel MS Project
Resources	RACI	Excel MS Project
Time	Work Plan	Matter Mgmt/eBilling Law Firm Billing System
Cost	Work Plan	Matter Mgmt/eBilling Law Firm Billing System
Communications	Communication Plan	

## **ACC RESOURCES: TOOLS**

Project Management Tools and Templates

[www.acc.com/legalresources/resource.cfm?show=1267881](http://www.acc.com/legalresources/resource.cfm?show=1267881)

“Avoid Litigation Surprises with Legal Project Management Software”

(*ACC Docket*, Vol. 25, No. 9, p. 36, Nov 2007)

[www.acc.com/legalresources/resource.cfm?show=14438](http://www.acc.com/legalresources/resource.cfm?show=14438)

## **ACC RESOURCES: SCOPE**

Sample Project Definition Template–Prudential Financial

[www.acc.com/legalresources/resource.cfm?show=1220472](http://www.acc.com/legalresources/resource.cfm?show=1220472)

Sample DONE Statement–Prudential Financial

[www.acc.com/legalresources/resource.cfm?show=1220539](http://www.acc.com/legalresources/resource.cfm?show=1220539)

Sample DONE Statement Challenge–Prudential Financial

[www.acc.com/legalresources/resource.cfm?show=1220674](http://www.acc.com/legalresources/resource.cfm?show=1220674)