



EMPOWERING THE FIELD

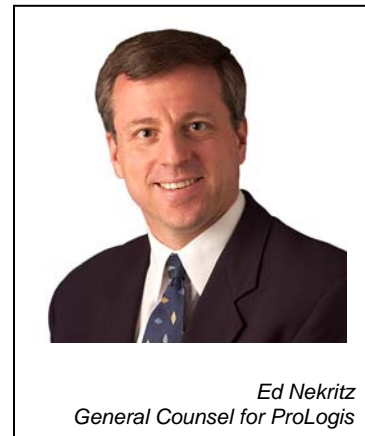
A Standardized Approach To Business Transactions Can Reduce Legal Overhead – And Drive Better Business Results

It's a classic dilemma that any general counsel faces when building the legal function at a growing company.

Is it better to farm transaction work out to an external law firm? Or does it make more sense to create a dedicated team of corporate attorneys in-house?

Both approaches have strengths and weaknesses – and neither option is ideal for many enterprises.

Outside firms employ talented lawyers who can churn out impeccable documents. But they often bill out at \$500 an hour or more – and they generally don't view individual transactions in the context of the company's broader business goals. In-house attorneys, by contrast, see transactions holistically and understand how each deal meshes with the company's overall strategy. But staffing an internal legal department requires time-consuming recruitment and training – and many companies simply don't have the business volume to justify a large in-house legal team.



Ed Nekritz
General Counsel for ProLogis

There is another way, one that can hold legal costs down while delivering high-quality results. With the appropriate training and investment in standardized transaction documents, a general counsel can empower field associates to be highly effective negotiators on the company's behalf.

My company, ProLogis, has adopted this approach – and it has proved to be a significant strategic advantage. As a global developer of industrial real estate, we equip our sales associates and due diligence team with “templated” tools that work for the vast majority of leases and property acquisitions and dispositions. These tools include pre-approved fallback provisions that address most issues that arise during negotiations. Meanwhile, we maintain a very compact department of in-house attorneys who are there to cover problems and deal points that our non-lawyer field associates can't and shouldn't attempt to handle.

This strategy successfully achieves a difficult balance: It helps drive our business forward, without bogging deals down in non-productive legal wrangling that is an unfortunate hallmark of the legal profession. At the same time, it effectively manages our corporate risk, minimizing exposure to liability and ensuring that the company's overall interests are protected.

A standardized approach to legal negotiations

ProLogis operates more than 2,400 distribution warehouses in 19 countries across North America, Asia and Europe. We are continuously developing new industrial buildings and leasing them to global enterprises like Home Depot, Unilever, FedEx and UPS. In addition, we are an

active acquirer of individual facilities and property portfolios, and we also dispose of properties when they no longer fit with our overall business strategy.

I first started working with ProLogis as an outside lawyer at a private firm in the early 1990s. At that time, the company was using my firm on every transaction – and paying out millions of dollars a year in fees as a result. When I came on board as general counsel, we began investigating ways to make the legal function more efficient. We thought we could create value by, in effect, deputizing our field associates to function as the company's front-line negotiators.

We built a standardized lease template and loaded it onto a central database that members of the sales force can access from their computers in field offices. When activated, the template prompts the associate with a list of basic questions: Who is the customer? It is a net lease or a net lease with stops? What's the lease rate? What's the term? What's the square footage? The sales rep inputs that and other relevant data, and the system then provides him or her with a pre-approved lease document that can be submitted directly to the customer – without the need for prior legal review.

The customer then submits that lease to their lawyer – who often comes back to us with a 30-page markup of what began as a 15-page lease document. But the beauty of the system is that it can generally address 85 percent of the issues raised by the customer's attorney, through pre-approved fallback language that our sales associate can access via the leasing template. Typically, our in-house legal staff steps in only at the end of the process, to handle the 15 percent of negotiation that really does require a trained lawyer's involvement.

We've adopted the same approach for acquisitions and dispositions. We operate a due diligence organization composed entirely of non-lawyers, who often serve as the primary negotiators on purchase and sale agreements. They also use a highly effective, centrally maintained template for these kinds of transactions, allowing us to process deals much more quickly than would be possible otherwise.

Risk management

Obviously, risk management is a key part of the equation here. As such, the company has adopted a series of measures designed to mitigate its legal exposure.

Our sales associates, for instance, are not authorized to depart from the language developed by the in-house legal team and provided by the system. They also can't execute leases on the company's behalf; that authority rests with senior-level regional managers, who review the exception language in each lease document before signing. Likewise, no asset can be bought or sold without approval from the company's internal investment committee, which is composed of senior officers.

We also conduct regular, in-depth training sessions with sales reps on how to use the system and to make sure they have a solid grasp of the legal basis for all the provisions in our standard lease. Finally, we update our lease template on a frequent basis, incorporating feedback from the field and relevant changes in statutes, case law or business conditions.

Applicability in other industries

The key question, of course, is whether this model can work at other companies. Real estate may be exceptionally well-suited to this strategy, but are there other business environments where it can be deployed effectively?

I firmly believe the answer yes – as long as a company can meet the following preconditions:

- **A critical mass of similar legal transactions.** A company that processes a high volume of agreements that require individualized legal negotiations is a good candidate for this approach. But contract provisions should not vary widely from deal to deal. The commercial lending and insurance industries come to mind as being in this category.
- **“Middle-of-the-fairway” legal documents.** Your standardized legal documents must feature legal positions that are fundamentally reasonable – and that will be seen as such by your counterpart’s attorney and his or her client’s within the business. Aggressive, one-sided language will inevitably bog deals down across the board – and undercut the field’s ability to serve as effective negotiators for the company.
- **Up-front investment in systems.** Implementing a standardized contracts program requires considerable planning and up-front investment in forms and business systems, as well as a diligent maintenance and oversight. The payoff can be huge, but only companies that take the time to “do it right” will reap these benefits.
- **Buy-in from the field.** A typical sales force may be resistant to the implementation of this strategy, because it requires them to master skills that are outside their traditional comfort zone. A general counsel and his or her legal team will need to build strong relationships with the sales organization and help field associates understand the long-term value the system offers.

Embracing entrepreneurship

Even more important than the preconditions listed above is the overall mindset of the general counsel and the legal department as a whole.

In-house lawyers must be instilled with the attitude that they are there to enable their colleagues in the field, to make deals happen, to help the business grow. A legal function that regards itself simply as a risk-management organization probably won’t succeed with this approach.

But a general counsel who can balance standard risk management with an entrepreneurial spirit has huge opportunity in this area. Empowering the field may be one of the most effective ways to advance the corporation’s interests, one that delivers near-term dividends and long-lasting value for the company.

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