

Arcadia

CLE Handout

*Tactics for Making a Business Case
(for Attorneys)*



**DeputyGC East Summit
March 1, 2023**

**Adam L. Masser
VP, DGC
Arcadia**

This document outlines methods we have found effective to persuade business leaders to (i) support legal/compliance initiatives; (ii) approve new spend; and (iii) follow legal guidance in the rare instance where it is cumbersome or unavoidably conflicts with their short term goals.

The most important guidance is to **use the language of the business**. How do your business leads talk about their objectives? Match their language, tie your advice or your request to their goals/what you know they care about. If possible, connect your business case to an existing company or department OKR, as there is already buy-in. Business leads will not necessarily respond to what *you* think is important. You have to make *them* think it is important by aligning incentives! Below are some ways to do that.

- **Metrics to prove business case:** Try to always use a measurable, quantifiable metric to show the benefits and costs.
 - Dollars and cents. This is best if possible
 - Current time to close deal --> improved time to close
 - # of personnel hours to do something --> # of hours saved (and what you will do with those extra hours!)
 - Quantification of deals/opportunities/revenue lost
 - Avoided cost of outside counsel--how much you might save with a new technology, research tool or hire
 - Peer/competitor/industry best practice gap analysis
 - Conditionality -- identify a business objective that is already adopted, and demonstrate it will not be possible without X

- **Cost/Benefit analysis:** This is a simple, fundamental business skill and should always be the starting frame for a business case. Some examples/permutations:
 - **Expected return:**
 - Likelihood of Success * Value of Success = Expected Return
 - If Expected Return is higher than Cost of Trying, then it is worth doing!

- **Avoided Cost:** How much can we save by doing this?
- **Breakeven formula for converting a contractor or hiring to reduce outside counsel spend:**
 - $X \text{ hours} * \text{hourly rate} = \text{salary} * \text{OF}$
 - OF is the overhead factor, and when multiplied by salary, it estimates the “total cost of employment.”
 - 1.3x is a pretty typical overhead factor.
 - You’re solving for X – that is how many contractor or outside counsel hours would result in a breakeven as against an internal hire. If anticipated hours exceed X, you should make the hire!
- **Examples to establish it's Serious:** If there is resistance from the business, sometimes you have to make it a little scary. The “parade of horrors” is one way to do that, using examples like:
 - Recent cases with financial liability
 - Recent prosecutions
 - Press coverage of similar scenarios (i.e., potential reputational harm)
 - Citations to guidance from regulators
 - Citations to statutory penalties (fines? personal liability?)
- **Risk impact factors:** Saying “there is a risk” is a lot less convincing than quantifying the risk. These are the key parameters for quantifying/estimating risk across different dimensions:
 - Financial impact - % of revenue
 - Financial impact – absolute
 - Reputational harm – geography: local, regional, national, global
 - Reputational harm – duration: short or long term
 - Operational risk - # of impacted departments/personnel
 - Operational risk - severity/burden of impact
 - Competitive/market risk: Will it hurt our market standing or help our competitors
 - Likelihood: Chance to occur - 0% - 100% over time frame (daily, monthly, yearly, every 5 or 10 years)
 - Control effectiveness: 0% (No controls) - 100% (consistently and effectively mitigated)

- **Risk Impact Evaluation.** * To really understand risk, you need to calculate Inherent Risk, as well as Residual Risk, which are functions of impact, likelihood and control effectiveness. Inherent Risk is the raw, uncontrolled risk. Residual Risk accounts for effectiveness of controls and is a comprehensive figure to inform (i) whether a risk is worth taking and (ii) whether additional controls are necessary. It is calculated as follows:
 - Inherent Risk = Risk Impact * Likelihood, where the Risk Impact is based on whichever quantified risk metric used above.
 - Residual Risk = Inherent Risk * (1 - Control Effectiveness).
 - For example, a risk that has a \$10M financial impact, a 50% likelihood per year, a control effectiveness of 75%, we would have the following:
 - **Inherent Risk:** \$10M/year * .5 = \$5M/year.
 - **Residual Risk** is \$5M/year * (1 - .75) = \$1.25M expected cost per year.

* **Note:** This method is for “one-off” risks. When performing an enterprise risk assessment across multiple risks and risk categories, the methodology and formulas are a bit different. Assign a 1-5 scale for both Risk Impact and Likelihood for each risk, and the Inherent Risk formula is $\sqrt{Risk\ Impact * Likelihood}$. Residual Risk is still Inherent Risk * (1- Control Effectiveness). This results in both Inherent Risk and Residual Risk sitting on a 1-100 scale, allowing (i) comparison of risks and (ii) identification of the organization’s most significant areas of excess risk.