



MARRIOTT
VACATIONS
WORLDWIDE™

LEGAL NEEDS OF PUBLIC COMPANIES

Top 5 Considerations for In-House Counsel

Jennifer Trowbridge

Procopio, Cory, Hargreaves & Savitch, LLP

Amber Condron

Marriott Vacations Worldwide Corporation

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Topics we will cover:

- 1) Learning your Company's Business
- 2) The Company as your "Client"
- 3) Common US Securities Laws and Rules
- 4) Common Periodic Filings
- 5) Effectively Managing Outside Counsel

1. Learning your Company's Business

- Industry and Operations
 - Understand legal issues
 - Materiality
 - SEC disclosures/ review past filings
- Internal
 - Company's structure (parents and subsidiaries)
 - Governance and compliance functions
 - Committees, board and management approvals

2) The Company as your “Client”

- CA Rules of Professional Responsibility
 - Rule 1.0.1 “law firm” includes the legal department
 - Rule 1.13 Organization as Client
 - Rule 1.7 Conflict of Interest
 - Rule 4.2 Communication with a Represented Person
- Upjohn warning (aka the corporate Miranda warning)
 - Representation of the company, not the individuals
 - Communications are protected, but the attorney-client privilege belongs to the company

2) The Company as your “Client”

- Attorney/Client Privilege
 - California Evidence Code § 954
 - Dual roles: “business hat” and “legal hat”
 - Bifurcate advice
 - Labeling documents and communications as privileged and/or confidential
 - Inadvertent waiver or disclosure
 - Presence of Third Parties in communications, reply all and cc
 - Chain emails and forwarded emails

2) The Company as your “Client”

- Build Relationships
 - General Counsel or Supervising Attorney
 - Become invaluable
 - Business Clients
 - Communication styles
 - Research and understand possible anticipated legal issues
 - Colleagues
 - Build your “brand” as someone who is helpful, easy to work with and collegial
 - Figure out how members of the team relate to each other (the “dynamics”)
 - Shareholders/Investors
 - Investor relations

3) Common US Securities Laws and Rules

- **Securities Act of 1933 (1933 Act)**
 - Regulates newly issued securities (i.e. IPO)
- **Securities Exchange Act of 1934 (1934 Act)**
 - Regulates disclosures for actively traded securities
- The SEC seeks to protect investors and ensure they receive adequate financial information and disclosures about investments.

3) Common US Securities Laws and Rules

- **Investment Company Act of 1940**
 - Regulates the formation of investment companies and their activities
- **Investment Advisers Act of 1940**
 - Regulates Investment Advisers

Particularly important for private funds and fund advisers.

3) Common US Securities Laws and Rules

- **The Sarbanes Oxley Act of 2002 (SOX)**
 - To help protect against fraudulent financial reporting by corporations
 - Requires Include Internal Controls Report in financial statements
 - Created the Public Company Accounting Oversight Board (PCAOB)
 - Covers auditor independence, corporate governance, etc.

3) Common US Securities Laws and Rules

- **Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010**
 - Created “say-on-pay” and “say-on-frequency”
 - Increased executive compensation disclosures in SEC filings;
 - Golden Parachute payments
 - Fringe benefits
 - Pay-for-performance ratios between CEO’s total compensation and all other employees

3) Common US Securities Laws and Rules

- **Jumpstart Our Business Startups (JOBS) ACT of 2012**
 - Created Emerging Growth Company
 - Gross revenues less than \$1bil
 - Relaxed regulatory burdens
 - Reg D 506(c)
 - General solicitation

4) Common Periodic Filings

- Current Reports on Form 8-K,
- Quarterly Reports on Form 10-Q,
- the Annual Report on Form 10-K,
- the Proxy Statement on Schedule 14A for the annual meeting and
- Section 16 filings for insiders on Forms 3, 4 and 5.

4) Common Periodic Filings

- Form S-1
- Form 10
- Form S-3
- Form S-8

- Form S-4- Mergers

5) Effectively Manage Outside Counsel

- Hire The Right Outside Counsel
- Create Clear Guidelines for Outside Counsel
- Confirm Rate and Expenses
- Require Detailed Bills
- Obtain Project Budget and Track Bills Against Budget

5) Effectively Manage Outside Counsel

- Put Project Plan in Place and Monitor Progress
- Require the Right Staff and Pre-Approval of Changes
- Get Electronic Copies of Documents for Work Product
- As Projects are Completed, Track Results and Identify Opportunities for Improvement
- Weed-out Underperformers

Questions ?



Jennifer Trowbridge

Senior Counsel

Procopio, Cory, Hargreaves & Savitch, LLP

Jennifer.trowbridge@procopio.com

direct dial: 858.720.6303



Amber Condron

Corporate Counsel

Marriott Vacations Worldwide Corporation

Amber.Condron1@mwwc.com