



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

CORPORATE LAWYERING

Fall 2000 Instructor:

Course No. 775-001 Basri & Kagan

Corporate lawyering refers to the practice of law within a corporate setting including other commercial (non-law firm) enterprises and not-for-profit organizations: but excluding government agencies. It is the purpose of this course to define the role of the in-house attorney engaged in corporate lawyering, and to describe his/her functions and responsibilities in providing legal services to his/her employer client within the framework of a law department in which he/she normally practices.

I. Role of the in-house attorney

A. Fundamental role of the in-house attorney is to provide counseling and other legal services to the employing entity/client and persons acting on its behalf.

B. Although an employee he or she acts in a professional capacity as an attorney and counselor-at-law: as such, is subject to the full range of rules and considerations governing the practice of law and professional conduct and responsibilities.

1. Ethical obligations
2. Attorney-client privilege
3. Query: Who is the "client"?

- a) Shareholders
- b) Directors
- c) CEO
- d) Other officers
- e) Public

1. Work product privilege and self evaluative privilege

5. Degree of independence necessary to preserve legal and ethical accountability

6. Safeguarding/enforcing the privilege

- a) Document controls
- b) Confidential communications within/without the organization

c) Disclosure obligations

II. Functions and responsibilities of the in-house attorney

A. Foster corporate conscience and set the tone for its ethical culture

- 1.
2. Maintain, periodically review and distribute the code of conduct to all employees
 2. Build awareness of applicable legal requirements and compliance responsibilities
 3. In coordination with auditors. circulate and review periodic questionnaires to managerial personnel covering their operational activities. duties and responsibilities
 4. Prepare and review questionnaires for special purposes (10-K and proxy materials: government certification)
 5. Coordination with particular departments within organization on specific issues (human resources-affirmative action programs; internal audit; security)
6. Self Evaluating Audits

B. Educational responsibilities

1. Practice preventive medicine
 - a) Instruct appropriate personnel on applicable laws, regulations and requirements governing their particular operations
 - b) Circulate information on new developments affecting these operations
 - c) Develop and monitor compliance programs
 - d) Coordinate internal audit programs
 - e) Tailor individual programs and procedures for specific departments (consumer relations; human resources; environmental/safety; import/export control; securities transactions)
 - f) Attend business review sessions of operational units
 - g) Attend sale and marketing meetings
 - h) Participate in franchise, licensing and distributor programs
2. Create/update contract and other standard forms used regularly in conduct of business
 3. Establish watchdog system to monitor competitive activities (e.g. comparative advertising claims; trademark, patent and copyright infringements; other anti-competitive behavior)

4. Counsel directors and officers on responsibilities and liabilities

C. Handle corporate legal affairs

1. Day-to-day matters

2. Transactional matters

3. Litigation and ADR proceedings

4. Special matters (government inquiries and investigations; internal investigations; criminal matters)

5. Government/public affairs and legislative matters

D. Selection use and supervision of outside counsel

1. Selection process

2. Billing arrangements

3. Reporting arrangements

4. Control of outside counsel activity

E. Corporate housekeeping

1. Maintenance of corporate archives records (other than financial books and records)

- a) In coordination with corporate secretary's office (if separate unit)

2. Establish and monitor document retention/disposition systems and procedures

3. Handle filing and licensing requirements (SEC and other federal filings; secretary of state and other state/local filings and licensing forms and applications; real estate and security records; trademark, patent and copyright filings)

4. Coordinate international controls (organization of foreign subsidiaries; foreign boards of directors; maintenance of subsidiaries' books and records; powers of attorney and other filings; exchange control procedures; technical service agreements)

F. Law department administration

1. The General Counsel's Office

2. Departmental table of organization and/or operations structured along:

- a) Operational lines: i.e. lawyers assigned to particular subsidiaries, divisions or other business units

- b) Specialized areas of law: e.g.: securities; labor; environmental; real estate; litigation; intellectual property

1. Effective interface between law department and the corporation's management and operational

divisions:

- a) Planned allocation of legal services (centralized versus decentralized focus)
- b) Effective utilization of in-house legal services and outside resources
 - 4. Budget management
 - a) Internal departmental costs
 - b) Outside counsel costs
 - c) Unbundling outside counsel costs
 - d) Other outside legal expenses
 - 5. Periodic reports to management
 - 6. Litigation logs and other schedules of pending matters
 - 7. Use of computerized state-of-the-art technology to enhance efficiency and effectiveness
- 1. Library and reporting services
 - 9. Paralegal use
 - 10. Evolution and refinement of law department functions and activities to meet organization's needs and changing conditions

G. Relationship with outside auditors

- 1. Opinion letters
- 2. Litigation logs and claim reports on pending and threatened matters
- 3. Other reports and updates
- 4. Internal audit issues
- 5. Disclosure obligations

H. Crisis Management

- 1. U.S. Model

- 1. European Model

III. Corporate Legal Affairs

A. Typical day-to-day matters (i.e. general practice)

- 1. Advertising, marketing and sales promotion activities

- a) Review, approval and clearance of campaigns; programs and material

- b) Contractual arrangements, e.g.:
 - i. agency agreements
 - ii. talent arrangements
 - iii. cooperative advertising
 - iv. non-disclosure agreements
 - v. vendor/supplier arrangements
 - vi. media relations
- c) Policing competitors
 - i. media continuity/clearance departments
 - ii. industry self-regulation and government and consumer group regulation
 - ii. false and misleading advertising
- iv. unfair competition
- v. product disparagement
 - 1. Intellectual property protection
 - a) Trademarks, patents, copyrights and trade secrets
 - b) Safeguarding, policing and enforcing these proprietary rights
 - c) Licensing arrangements
 - 2. Trade regulations
 - a) Antitrust compliance
 - b) FTC rules and regulations
 - c) Robinson-Patman Act
 - d) Specific regulations: FDA, BATF, FCC, ICC
- 1. Vendor/supplier relations
 - a) Drawing operative documents
 - i. purchase orders
 - ii. supply agreements

- iii. other contractual arrangements
- b) Cooperative programs
- c) Credit/collection issues
- d) Resolving disputes
- 2. Customer/consumer relations
 - a) Consumer protection issues
 - b) Product liability
 - c) Credit/collection issues
 - d) Resolving disputes
- 3. Insurance and risk management
 - a) Self-insurance programs
 - b) Product liability issues
 - c) Asserting claims
 - d) Directors' and Officers' coverage
- 4. Environmental matters
 - a. Manage and monitor compliance in coordination with operating units and other corporate departments
 - i. dealing with governmental regulations and requirements
 - ii community/employee right-to-know issues
 - iii. assessing liability
 - b) Responding to environmental occurrences
 - i. community relations
 - ii media/public relations
 - iii. governmental agency communications
 - iii.
 - c) Environmental aspects of acquisition, divestiture, and financing transactions
- 1. Employment matters

- a) Employee benefits
- b) Employment agreements
- c) Termination/severance
- d) Employee handbooks and other personnel material
- e) Collective bargaining/labor relations
- f) Anti-discrimination policies and practices
 - a. Government regulations (federal, state and local): EEOC, OSHA
ADA, NLRB
- h) Sexual harassment

1. Licensing, franchising and distribution arrangements

- a) Creating operative documents
- b) Handling on-going systems
- c) Monitoring programs
- d) Resolving disputes
- e) Government regulations

10. Securities laws and regulations

- a) Preparation of periodic filings (e.g., 8-K, 10 Q/K)
- b) Annual reports
- c) Proxy material
- d) Stock exchange relations
- e) Shareholder relations
- f) Public relations

11. Real estate activity

12. International affairs

- a) Retention and management of local counsel network or foreign consultants
- b) Controlling foreign subsidiary legal activities directly through local counsel
 - i. international lawyering: a country-by-country exercise
 - ii. special problems/issues

iii. corporate housekeeping

c) Globalization

i. EEC and other regional trading groups

Treaties - e.g., GATT, NAFTA, WIPO

iii. Foreign Corrupt Practices Act

iv. Foreign Agents Act

v. Arab boycott/blacklist issues

B. Transactional matters

1. Mergers/acquisitions/divestitures

2. Joint ventures

3. Financing transactions

4. Securities offerings

5. Capital projects

6. Equipment leasing

C. Litigation and Alternate Dispute Resolution (ADR) proceedings

1. Direct in-house handling

2. Outside trial counsel

a) In-house supervision and control

b) Billing systems

c) Reporting systems

3. Mediation and arbitration

4. Foreign/information proceedings

D. Special matters

1. Government inquiries and investigations

2. Criminal matters

3. Bankruptcy/work-outs/restructuring

4. Shareholder claims

5. Proxy issues

E. Government/public affairs/legislative matters

1. Administrative agency practice
2. Rule-making proceedings
3. Public affairs
 - a) Media communications
 - b) Community relations
 - c) Political activities
 - d) Company publications
4. Lobbying
5. Legislative process
6. Political Action Committees (PAC's)

7. Trade association
 - a) Legal/legislative activities
 - i. supporting/defending litigation of industry/company concern
 - ii. amicus filings
 - b) Sponsoring legislation
 - c) Monitoring association activities
 - i. attending meetings
 - ii. controlling membership

F. Counseling on general business affairs

- a) Counseling the business people on typical commercial matters
- b) Participating in negotiations

IV Pro Bono Activities

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