

4TH ANNUAL FUTURE OF LAWYERS CONFERENCE

Cross-Border Risks for International Lawyers Legal, regulatory, and reputational risks How to protect clients in a changing international legal environment

**Presented by:
Foreign Lawyers' Section of
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For an international company like ST, European-based, with the presence of more than 50,000 employees all over the world, globalization is a reality, and compliance with the regulatory environment in all countries in which we operate, is both a business and an ethical requirement.

As a Dutch company listed on the NYSE, Euronext and Milano Borsa, dealing with three different stock exchange requirements, often contradictory amongst themselves, is a challenge. Already since 2003 with the publication of the Dutch Corporate Governance Code which set forth a series of "best practices in terms of applicable Corporate Governance" to all companies whose registered office is in the Netherlands, ST was required to report and explain the differences between its own practices complying with US, French and Italian stock exchange requirements, and best practices pursuant to the Dutch Corporate Governance Code.

Issues concerned compensation, independence of directors, terms of directors' mandates.

And the new Extraterritorial Regulations (SOX, Conflict Minerals, FCPA, UK Bribery Act, Antitrust legislation, Trade Compliance and Export Control legislation) for companies operating in increasingly globalized economies, expose not only the corporation, but also its directors, and officers to ever increasing personal legal risks. The result : the development of an in-house compliance function.

“Compliance” is the key work in the XXIst century for all medium size to big corporations, which have nearly all created and developed an in-house compliance function. Its role :

- develop policies, procedures and training programs to educate employees on risks involved in not complying with applicable laws ;
- create and operate internal whistleblowing hot lines, to encourage employees to report wrong doings, particularly those which may impact financial reporting ;
- institute and operate increased internal controls.

As a result of the increased personal risks faced by Directors and Officers, D&O policies are increasingly scrutinized for appropriate coverage.

At the same time, compliance with all applicable rules in jurisdictions where a company operates, may generate a business competitive advantage. The whole business organization is impacted.

Take the US Law on Conflict Minerals Disclosure. The obligations are legal, but the implementation of an effective control system is also required for business reasons. It is not only the SEC, but also our customers that are demanding more and more from their suppliers in terms of visibility and control on the supply chain.

The deployment of a process to identify the country of origin and exercise due diligence on source and chain of custody for conflict minerals, may be supervised by lawyers, but becomes a prerogative of the sourcing and logistic organizations.

For this reason, investment in a Compliance function to control good business practices and implement corporate governance programs are more and more to be considered not only from a defensive, risk avoidance perspective, but also proactively, as a business opportunity : companies are more and more publishing reports on corporate sustainability. Inclusion in the Dow Jones Sustainability index for example is viewed as an opportunity to improve a company’s image towards all stakeholders.

The problem is that, despite such good intentions, directors, officers and managers of international corporations are getting more and more overwhelmed. Executives are finding it harder and harder to focus on the business, designing, making and selling of products, improving their company’s competitiveness. They are spending more time with their lawyers and often they don’t like it !

Historically CEO's and top managers would focus on business, accessorially on accounting and tax issues, because the business and financial results and their reporting was the key-communication driver. But today, legal risks are ever increasing, due to the number of new laws, the complexity of their provisions, extraterritoriality in a globalized economy.

In fact even the accountants are including in their check lists, controls on compliance, for instance, on SOX, and whistleblowing hot lines.

Investors are also raising more than in the past, legal questions during investors meetings.

Regulatory bodies, SEC, or other stock exchange authorities are increasingly inquisitive.

Audit Committees in accordance with SOX have taken over new responsibility for outside attorneys, in advising, controlling, helping to implement procedures and developing training programs. The new European Transparency Directive to implement similar rules in the EU is raising controversy.

The challenge for lawyers : is their role simply advisory, or by assuming responsibilities for risk avoidance are we moving towards an increase in the box ticking, administrative role of the paralegal !

For the outside legal profession, developing expertise in compliance and compliance programs, helping draw attention of senior executives to compliance issues and advise on their resolutions is a business opportunity in a globalized economy. Clients need to be aware that it is in their best interests to be proactive rather than reactive with respect to legal risks.

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