



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