



201 Risk Management Across Borders

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Faculty Biographies

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Nicholas R. Sayeedi

Nick Sayeedi is Vice President and Associate General Counsel of EchoStar Communications, a Fortune 300 global media technology company. During his eight years at Echostar, he has overseen such legal functions as international transactions and litigation, IT, broadband, international content licensing and distribution, international outsourcing, department management, business television, sales and distribution, securities compliance and M&A, employment, marketing, and FCC compliance. He is currently based in the UK and oversees all of EchoStar's international legal work.

Prior to joining EchoStar, Mr. Sayeedi was an associate at a large international law firm. He currently serves as Chair of ACC's International Legal Affairs Committee.

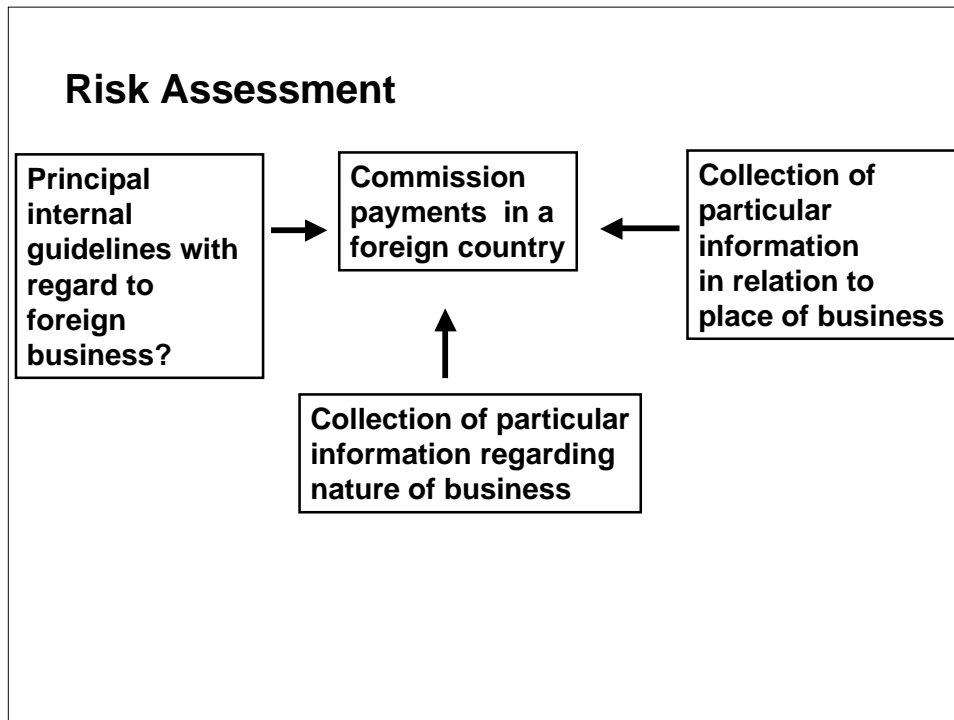
Mr. Sayeedi earned a BA from the University of Colorado in Mathematics, and a JD in 1991 from the University of California. He has qualified to practice law in the US (California and Colorado) and Europe (England and Wales).

Wolf Von Kumberg

Mr. Von Kumberg has been the European Legal Director for Northrop Grumman Corporation and its predecessor, Litton Industries, Inc., for the past twelve years. As Legal Director, he manages a staff of six and is responsible for the legal affairs of Northrop Grumman Corporation in Europe. He has extensive experience in international arbitration/mediation, commercial, regulatory and public procurement law.

Prior to joining Litton Industries he served five years as the Vice President – Legal Affairs for Litton Canada, after having spent several years in legal practice with a major Toronto Law Firm.

Mr. Von Kumberg has received law degrees from Canadian and European Universities and is qualified as a lawyer in both Canada and England.



“Smell Test”

- Addressee of payment (public official, employee of business partner, etc.)
- Unusual amount of the commission (adequacy test)
- No economic justification for the commission (reason / amount)
- Unusual payment methods/procedure
- Suspicion of “Kick-back” payments, e.g. customer offers above quoted price

Risk mitigation

- Use of external agents instead of own sales employees
- Briefing of own employees and agents about legal risks/requirements
- Standard form (to be adapted to individual case)
- Documentation of payment flow
- Submission of photocopies of passports of payment receivers
- Set up internal helpline for employees to report conspicuous payments anonymously

Legal risk in cases of...

- Corruption and bribery of domestic public officials
- Bribery of foreign public officials (at least as long as the “facilitating payment” is aimed at a future official act which is in violation of official duties)
- Taking and offering a bribe in business transactions
- Tax evasion if “facilitating payments” (which in some countries have been deductible in the past) are deducted
- Breach of trust if the facilitating payments are not compensated adequately by a pecuniary benefit

Legal risks for...

- Sales employees and sales agents
- Management
- In some countries (e.g. in Italy) corporate criminal liability

Legal risks may result in...

- Criminal responsibility
- Civil liability
- Disqualification from the exercise of the company activity

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

Adopted by the Negotiating Conference on 21 November 1997

Preamble

The Parties,

Considering that bribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions;

Considering that all countries share a responsibility to combat bribery in international business transactions;

Having regard to the Revised Recommendation on Combating Bribery in International Business Transactions, adopted by the Council of the Organisation for Economic Co-operation and Development (OECD) on 23 May 1997, C(97)123/FINAL, which, *inter alia*, called for effective measures to deter, prevent and combat the bribery of foreign public officials in connection with international business transactions, in particular the prompt criminalisation of such bribery in an effective and co-ordinated manner and in conformity with the agreed common elements set out in that Recommendation and with the jurisdictional and other basic legal principles of each country;

Welcoming other recent developments which further advance international understanding and co-operation in combating bribery of public officials, including actions of the United Nations, the World Bank, the International Monetary Fund, the World Trade Organisation, the Organisation of American States, the Council of Europe and the European Union;

Welcoming the efforts of companies, business organisations and trade unions as well as other non-governmental organisations to combat bribery;

Recognising the role of governments in the prevention of solicitation of bribes from individuals and enterprises in international business transactions;

Recognising that achieving progress in this field requires not only efforts on a national level but also multilateral co-operation, monitoring and follow-up;

Recognising that achieving equivalence among the measures to be taken by the Parties is an essential object and purpose of the Convention, which requires that the Convention be ratified without derogations affecting this equivalence;

Have agreed as follows:

Article 1

The Offence of Bribery of Foreign Public Officials

1. Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.
2. Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.
3. The offences set out in paragraphs 1 and 2 above are hereinafter referred to as "bribery of a foreign public official".
4. For the purpose of this Convention:
 - a. "foreign public official" means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation;
 - b. "foreign country" includes all levels and subdivisions of government, from national to local;
 - c. "act or refrain from acting in relation to the performance of official duties" includes any use of the public official's position, whether or not within the official's authorised competence.

Article 2

Responsibility of Legal Persons

Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.

Article 3

Sanctions

1. The bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. The range of penalties shall be comparable to that applicable to the bribery of the Party's own public officials and shall, in the case of natural persons, include deprivation of liberty sufficient to enable effective mutual legal assistance and extradition.

2. In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for bribery of foreign public officials.

3. Each Party shall take such measures as may be necessary to provide that the bribe and the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable.

4. Each Party shall consider the imposition of additional civil or administrative sanctions upon a person subject to sanctions for the bribery of a foreign public official.

Article 4

Jurisdiction

1. Each Party shall take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.

2. Each Party which has jurisdiction to prosecute its nationals for offences committed abroad shall take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official, according to the same principles.

3. When more than one Party has jurisdiction over an alleged offence described in this Convention, the Parties involved shall, at the request of one of them, consult with a view to determining the most appropriate jurisdiction for prosecution.

4. Each Party shall review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials and, if it is not, shall take remedial steps.

Article 5

Enforcement

Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

Article 6

Statute of Limitations

Any statute of limitations applicable to the offence of bribery of a foreign public official shall allow an adequate period of time for the investigation and prosecution of this offence.

Article 7

Money Laundering

Each Party which has made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation shall do so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred.

Article 8

Accounting

1. In order to combat bribery of foreign public officials effectively, each Party shall take such measures as may be necessary, within the framework of its laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery.

2. Each Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications in respect of the books, records, accounts and financial statements of such companies.

Article 9

Mutual Legal Assistance

1. Each Party shall, to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the scope of this Convention and for non-criminal proceedings within the scope of this Convention brought by a Party against a legal person. The requested Party shall inform the requesting Party, without delay, of any additional information or documents needed to support the request for assistance and, where requested, of the status and outcome of the request for assistance.

2. Where a Party makes mutual legal assistance conditional upon the existence of dual criminality, dual criminality shall be deemed to exist if the offence for which the assistance is sought is within the scope of this Convention.

3. A Party shall not decline to render mutual legal assistance for criminal matters within the scope of this Convention on the ground of bank secrecy.

Article 10

Extradition

1. Bribery of a foreign public official shall be deemed to be included as an extraditable offence under the laws of the Parties and the extradition treaties between them.
2. If a Party which makes extradition conditional on the existence of an extradition treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention to be the legal basis for extradition in respect of the offence of bribery of a foreign public official.
3. Each Party shall take any measures necessary to assure either that it can extradite its nationals or that it can prosecute its nationals for the offence of bribery of a foreign public official. A Party which declines a request to extradite a person for bribery of a foreign public official solely on the ground that the person is its national shall submit the case to its competent authorities for the purpose of prosecution.
4. Extradition for bribery of a foreign public official is subject to the conditions set out in the domestic law and applicable treaties and arrangements of each Party. Where a Party makes extradition conditional upon the existence of dual criminality, that condition shall be deemed to be fulfilled if the offence for which extradition is sought is within the scope of Article 1 of this Convention.

Article 11

Responsible Authorities

For the purposes of Article 4, paragraph 3, on consultation, Article 9, on mutual legal assistance and Article 10, on extradition, each Party shall notify to the Secretary-General of the OECD an authority or authorities responsible for making and receiving requests, which shall serve as channel of communication for these matters for that Party, without prejudice to other arrangements between Parties.

Article 12

Monitoring and Follow-up

The Parties shall co-operate in carrying out a programme of systematic follow-up to monitor and promote the full implementation of this Convention. Unless otherwise decided by consensus of the Parties, this shall be done in the framework of the OECD Working Group on Bribery in International Business Transactions and according to its terms of reference, or within the framework and terms of reference of any successor to its functions, and Parties shall bear the costs of the programme in accordance with the rules applicable to that body.

Article 13

Signature and Accession

1. Until its entry into force, this Convention shall be open for signature by OECD members and by non-members which have been invited to become full participants in its Working Group on Bribery in International Business Transactions.
2. Subsequent to its entry into force, this Convention shall be open to accession by any non-signatory which is a member of the OECD or has become a full participant in the Working Group on Bribery in International Business Transactions or any successor to its functions. For each such non-signatory, the Convention shall enter into force on the sixtieth day following the date of deposit of its instrument of accession.

Article 14

Ratification and Depositary

1. This Convention is subject to acceptance, approval or ratification by the Signatories, in accordance with their respective laws.
2. Instruments of acceptance, approval, ratification or accession shall be deposited with the Secretary-General of the OECD, who shall serve as Depositary of this Convention.

Article 15

Entry into Force

1. This Convention shall enter into force on the sixtieth day following the date upon which five of the ten countries which have the ten largest export shares set out in DAF/IME/BR(97)18/FINAL (annexed), and which represent by themselves at least sixty per cent of the combined total exports of those ten countries, have deposited their instruments of acceptance, approval, or ratification. For each signatory depositing its instrument after such entry into force, the Convention shall enter into force on the sixtieth day after deposit of its instrument.
2. If, after 31 December 1998, the Convention has not entered into force under paragraph 1 above, any signatory which has deposited its instrument of acceptance, approval or ratification may declare in writing to the Depositary its readiness to accept entry into force of this Convention under this paragraph 2. The Convention shall enter into force for such a signatory on the sixtieth day following the date upon which such declarations have been deposited by at least two signatories. For each signatory depositing its declaration after such entry into force, the Convention shall enter into force on the sixtieth day following the date of deposit.

Article 16

Amendment

Any Party may propose the amendment of this Convention. A proposed amendment shall be submitted to the Depositary which shall communicate it to the other Parties at least sixty days before convening a meeting of the Parties to consider the proposed amendment. An amendment adopted by consensus of the Parties, or by such other means as the Parties may determine by consensus, shall enter into force sixty days after the deposit of an instrument of ratification, acceptance or approval by all of the Parties, or in such other circumstances as may be specified by the Parties at the time of adoption of the amendment.

Article 17

Withdrawal

A Party may withdraw from this Convention by submitting written notification to the Depositary. Such withdrawal shall be effective one year after the date of the receipt of the notification. After withdrawal, co-operation shall continue between the Parties and the Party which has withdrawn on all requests for assistance or extradition made before the effective date of withdrawal which remain pending.

ANNEX

STATISTICS ON OECD EXPORTS

OECD EXPORTS			
	1990-1996	1990-1996	1990-1996
	US\$ million	%	%
		of Total OECD	of 10 largest
United States	287 118	15,9%	19,7%
Germany	254 746	14,1%	17,5%
Japan	212 665	11,8%	14,6%
France	138 471	7,7%	9,5%
United Kingdom	121 258	6,7%	8,3%
Italy	112 449	6,2%	7,7%
Canada	91 215	5,1%	6,3%
Korea (1)	81 364	4,5%	5,6%
Netherlands	81 264	4,5%	5,6%
Belgium-Luxembourg	78 598	4,4%	5,4%
Total 10 largest	1 459 148	81,0%	100%
Spain	42 469	2,4%	
Switzerland	40 395	2,2%	
Sweden	36 710	2,0%	
Mexico (1)	34 233	1,9%	
Australia	27 194	1,5%	
Denmark	24 145	1,3%	
Austria*	22 432	1,2%	
Norway	21 666	1,2%	
Ireland	19 217	1,1%	
Finland	17 296	1,0%	
Poland (1) **	12 652	0,7%	
Portugal	10 801	0,6%	
Turkey *	8 027	0,4%	
Hungary **	6 795	0,4%	
New Zealand	6 663	0,4%	
Czech Republic ***	6 263	0,3%	
Greece *	4 606	0,3%	
Iceland	949	0,1%	
Total OECD	1 801 661	100%	

Notes: * 1990-1995; ** 1991-1996; *** 1993-1996

Source: OECD, (1) IMF

Concerning Belgium-Luxembourg: Trade statistics for Belgium and Luxembourg are available only on a combined basis for the two countries. For purposes of Article 15, paragraph 1 of the Convention, if either Belgium or Luxembourg deposits its instrument of acceptance, approval or ratification, or if both Belgium and Luxembourg deposit their instruments of acceptance, approval or ratification, it shall be considered that one of the countries which have the ten largest exports shares has deposited its instrument and the joint exports of both countries will be counted towards the 60 percent of combined total exports of those ten countries, which is required for entry into force under this provision.

Commission Payment Details

(to be adapted to individual case)

1. **Recipient's Details**

Name:

Address:

Recipient is:

Independent broker

Employee or staff member or representative of Contracting Party

Employee or staff member or representative of Company

Public official

2. **Payment Details**

Amount of payment:

Method of payment: Cash Cheque Bank transfer

2.1 **Recipient's Bank Details, if applicable**

Name of account:

Account number:

Sort code:

3. **Details of contract**

Contract number:

Date:

3.1 **Contracting Party:**

Contracting Party Name:

Contracting Party Address:

The Contracting Party is:

Private entity	Yes <input type="checkbox"/>	No <input type="checkbox"/>
State owned, municipal or other public entity	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Government agency	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Signature of Recipient

[PRINT NAME]

Signed on behalf of Company

[PRINT NAME]

Place:

Date:

Approved by Company treasurer

[PRINT NAME]

Receipt for Commission

Contract number:

Date of contract:

Invoice number: _____ in the amount of _____

Invoice date:

I/we hereby confirm receipt of _____ for the following services in connection with the contract as detailed above:

[*please insert*]

Identification provided: Yes No

Confirmation that identification will be provided at a later date:

Name of Recipient:
Address of Recipient:

Signature of Recipient _____
[PRINT NAME]

Signed on behalf of Company _____
[PRINT NAME]

Place:

Date:



201
Risk Management Across Borders

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June 19-21, Conrad Hotel, Brussels, Belgium



GE Money Bank

SESSION D
Compliance Monitoring

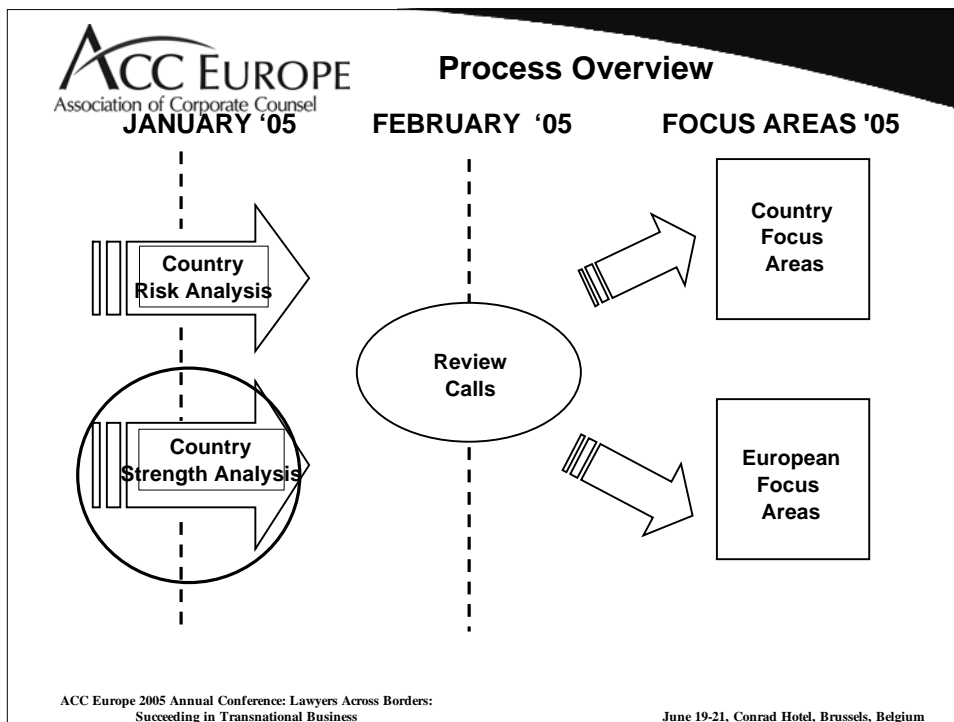
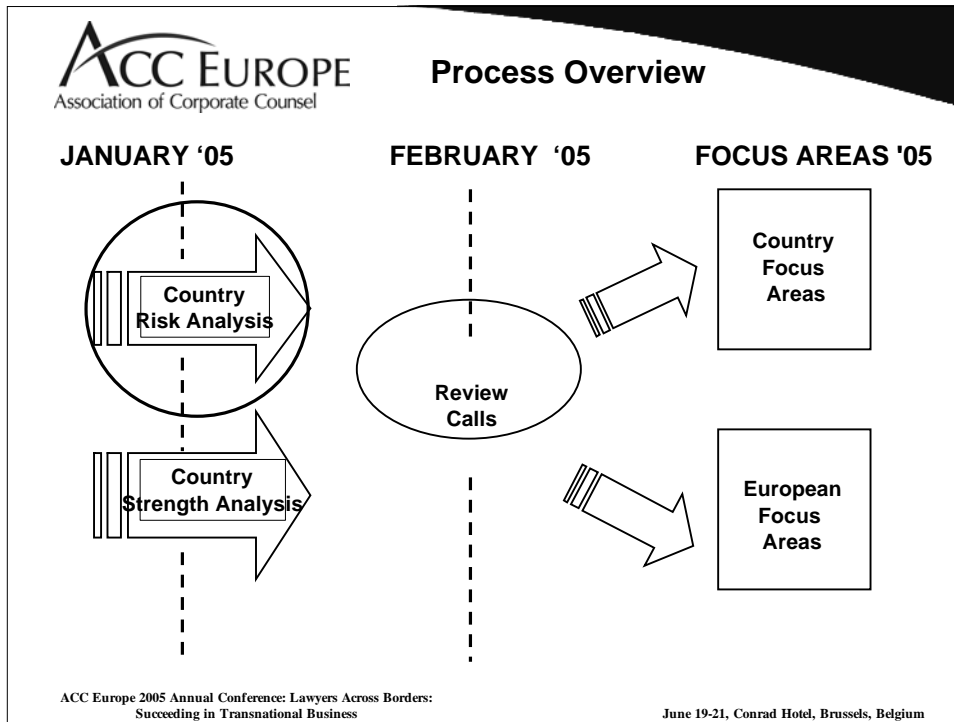


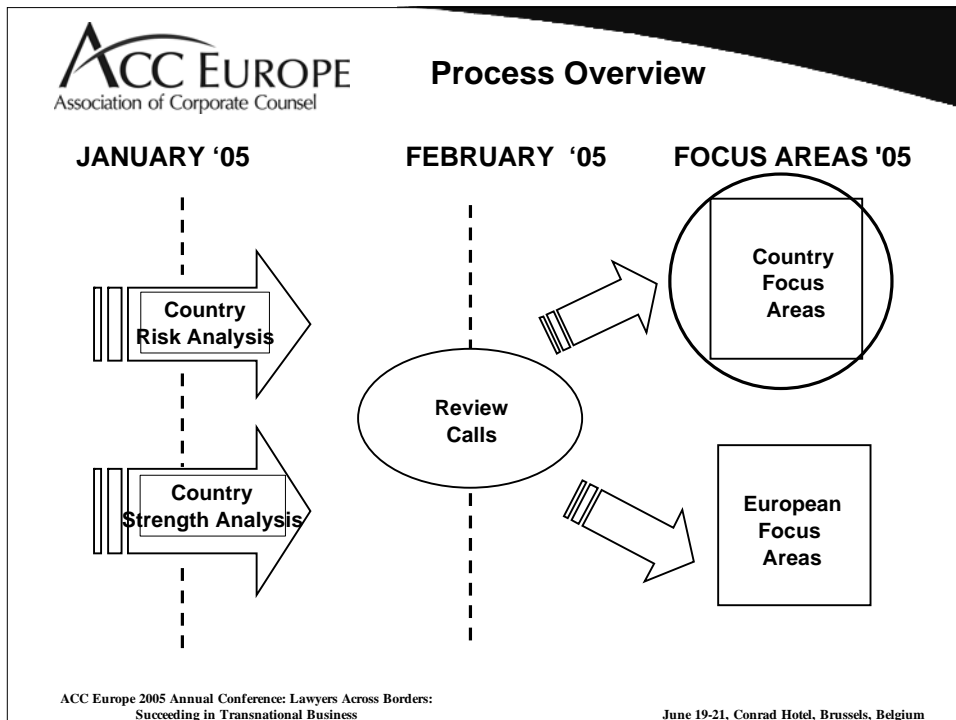
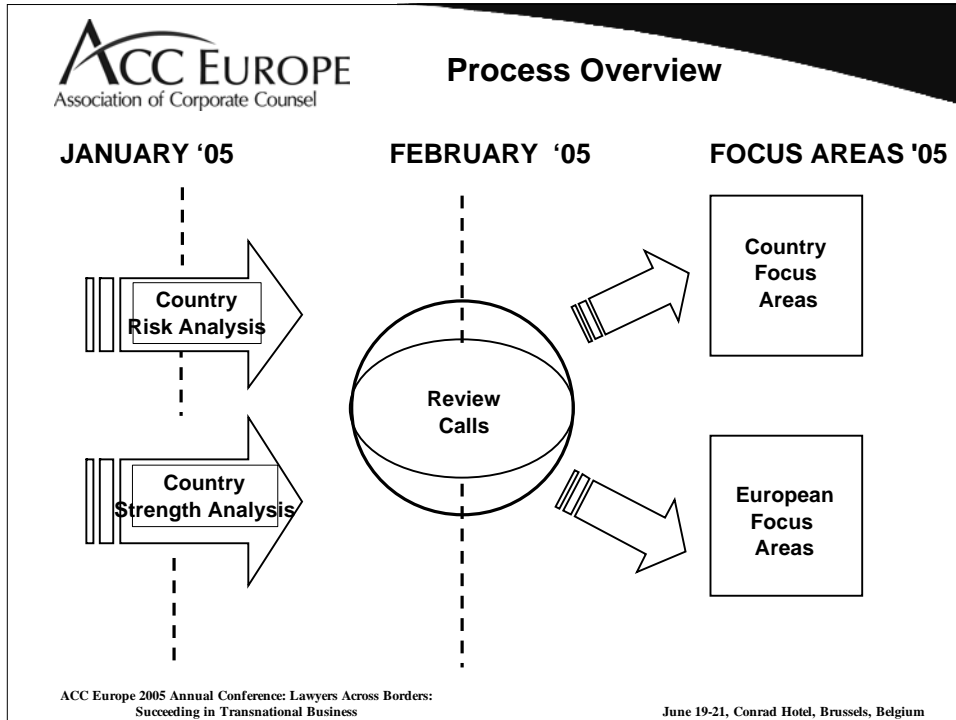
Susan Crichton

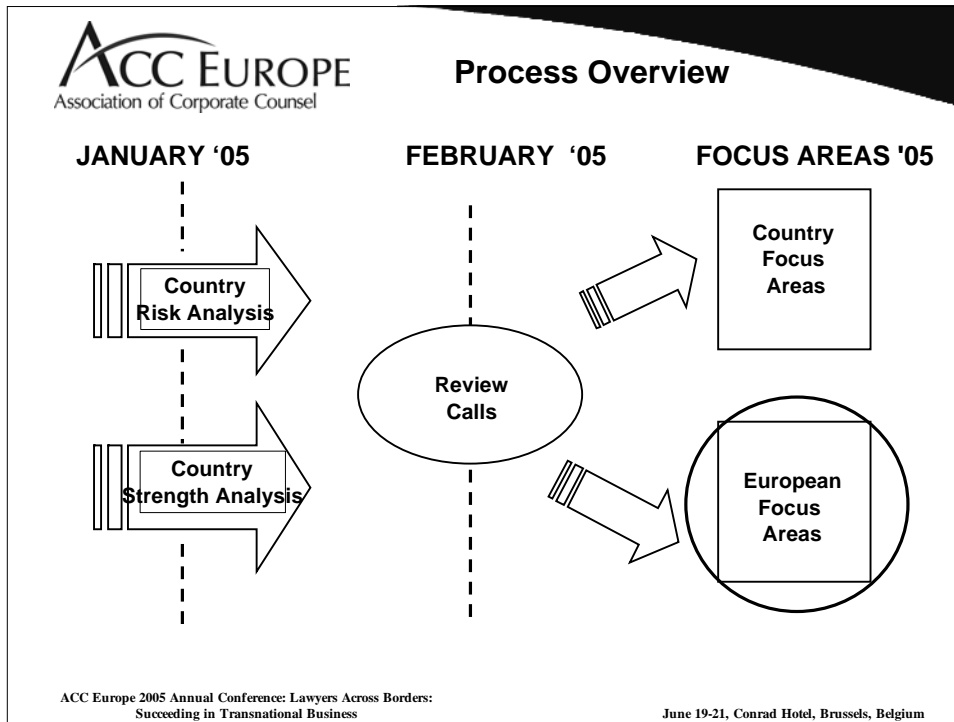
June 2005

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- ACC EUROPE**
Association of Corporate Counsel
- ### Risk Metrics 2005
- ❖ Total Asset Growth
 - ❖ Employee Turnover
 - ❖ CEO 'Q' On Ethics
 - ❖ Remote Locations
 - ❖ Products Diversity (new)
 - ❖ New Products (new)
 - ❖ Insurance Sales (new)
 - ❖ Insurance Features (new)
 - ❖ Products APR (new)
 - ❖ Products Fees (new)
 - ❖ Intermediaries
 - ❖ Deposit Funding
 - ❖ Management Data
 - ❖ Business Transfers
 - ❖ Business Integration
 - ❖ Joint Ventures
 - ❖ Debt Sales
 - ❖ 3rd Party Collectors
 - ❖ SMS For Collections
 - ❖ IT Consolidation
 - ❖ Outsourcing
 - ❖ Other Internal Risks
 - ❖ Law Changes
 - ❖ Local Regulators
 - ❖ Consumer groups
 - ❖ Media
 - ❖ Other External Risks
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Healthcheck Metrics 2005

- Compliance Leader
- Compliance Review Board
- Compliance Champions
- Ombuds Program
- Communication
- Integrity Awareness
- Leadership Training
- Compliance Training
- Early Warning System
- CCRP Process
- Dashboards
- Audit Findings
- Anti Money Laundering
- Prohibited Persons
- New Product Introduction
- Product Transparency & Fairness
- Insurance
- Post Sale Calls
- Sales Practices
- Collection Practices
- Know Your Intermediary
- Supplier Selection
- Regulatory Affairs
- Competitor Contacts
- Insider Trading
- Data Protection
- Information Security
- Intellectual Property
- Health & Safety
- Crisis Management
- Hiring Practices
- Fair Employment
- Conflict of Interest
- Use of Company Funds
- Employee Appraisals
- Integrity Violations

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DEFINING THE FUTURE **NORTHROP GRUMMAN**

Exporting Compliance Across Cultures

30 May 2005

Wolf von Kumberg
European Legal Director
Northrop Grumman Corporation

Law Department, Europe Wolf von Kumberg
30 May 2005

DEFINING THE FUTURE **NORTHROP GRUMMAN**

Situation:

A major emphasis of the legal department of Northrop Grumman has been legal risk Management. This has been a primary focus since the U.S. Government began taking a closer look among defence contractors in the 1980s. The Philosophy and approach to compliance and risk management is developed in the U.S., where most of the Company business is based, but adapted to the requirements of local jurisdictions where the subsidiary companies operate.

Law Department, Europe Wolf von Kumberg
30 May 2005

DEFINING THE FUTURE **NORTHROP GRUMMAN**

In-house Counsel Challenge:

To effectively 'translate' and apply compliance programmes and risk management initiatives to markets outside of the country of corporate headquarters to a variety of culturally and linguistically diverse foreign entities. Often outside of the U.S. the local business management does not have the U.S. regulatory background or context to understand the components of the compliance program and their relevance. Sometimes the language causes confusion. The danger is that these legal risk initiatives will be ignored and replaced with local compliance efforts at the expense of corporate- wide requirements.

Law Department, Europe Wolf von Kumberg
30 May 2005

DEFINING THE FUTURE **NORTHROP GRUMMAN**

Approach (I) :

In-house lawyers in Europe report in a matrix organisation to the General Counsel at U.S.headquarters, but are located with the business internationally. They are thus able to develop a good understanding of clients, products and internal workings of the operations. In-house counsel work closely with local management to provide general legal guidance to the operating entities and to identify key elements in dealing with legal risks.

The provision of legal services, including compliance, is carried out by working closely with local management and becoming part of the management team.

Law Department, Europe Wolf von Kumberg
30 May 2005

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Approach (II) :

Implementation steps:
Members of the Northrop Grumman's Law Department outside the U.S. are responsible for:

- **Ensuring that local law and regulations are being complied with at the operating entities**
- **Being the conduit to convey Corporate and Sector policies and procedures to the operating entities**
- **Assisting Audit staff in checking that the policies and procedures are in place and being complied with**
- **Reviewing corporate governance issues at the foreign subsidiaries and assisting in formulating a Corporate policy to ensure compliance**
- **Ensuring that subsidiaries are complying with local statutory filing requirements**

Law Department, Europe Wolf von Kumberg
30 May 2005

DEFINING THE FUTURE **NORTHROP GRUMMAN**

Approach (III) :

A series of mechanisms to ensure monitoring of European legal issues by the local in-house lawyers has been put in place:

1. **Training programs and standards of conduct, ethics, export law etc. are adapted locally, but the standards and ethics are consistent globally**
2. **A European contracts review procedure**
3. **Monthly activity report highlighting key legal matters in Europe**
4. **Adaptation of Corporate and Sector policies to meet European requirements**
5. **Working closely with Sector and Division counsel, as well as the international lawyers in the USA**
6. **Translating requirements both linguistically and culturally**

Law Department, Europe Wolf von Kumberg
30 May 2005

DEFINING THE FUTURE **NORTHROP GRUMMAN**

Measuring Success :

Our training programs in Europe have been well received. By taking care to adapt communications and initiatives to the local market, we have created higher acceptance of compliance efforts that are not 'homegrown'. Increasingly, managers know better when to come to us with questions and to ask for guidance. The emphasis is to have foreign management "buy in", rather than be dictated to.

Law Department, Europe Wolf von Kumberg
30 May 2005

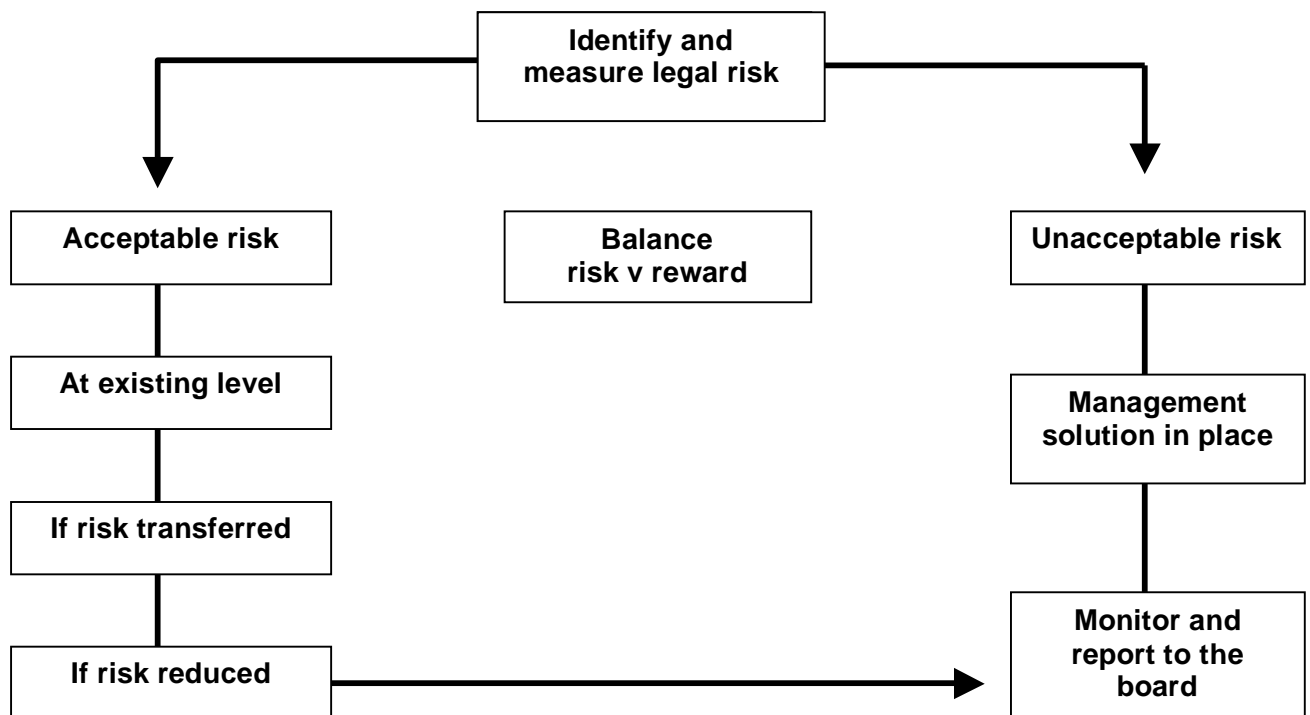
IDENTIFYING LEGAL RISK

Overview of potential exposures

COMPANY

Operational risk	Business risk	Compliance risk	Financial risk
- Employees - Brand management - Customers - Suppliers - Contractors - Outsourcing	- Business strategy - Technology - Acquisition - Innovation - Politics - General and regional economics - Pricing - Substitute products	- Relevant statutory provisions - Health and Safety - Environmental - Taxation authorities - Competition law - Accountancy	- Market - Interest - Currency - Fraud - Credit - Liquidity

MANAGING LEGAL RISK



- Reducing the risk. Policies or procedures should be implemented that reduce the likelihood of the risk occurring.
- Transferring the risk. This strategy transfers any resulting financial and non-financial costs to another party or organisation.
- Avoiding the risk. Sometimes, after analysis of a business decision which involves potential legal risk, the best course may be to take an action which avoids the risk altogether.
- Assuming the risk. After analysis, the likelihood of a particular legal risk occurring may be so low or the business project so important that the company decides to assume the risk and resultant liability. This strategy is one that should be implemented by design, not default.

MANAGING LEGAL RISK THE NORTHROP GRUMMAN APPROACH

A major emphasis of the Department has been on legal risk management. This has been carried out by working closely with local management and becoming part of the management team. Key elements in dealing with legal risks have been identified.

- complying with local State and EU laws and regulations
- preventing criminal prosecutions
- preventing civil claims based on failure to comply
- invoking contractual remedies where possible
- defending or containing third party claims
- early and effective claims management
- employing alternative dispute resolution mechanisms

The Law Department has been organised to address these elements of legal risk as follows:

1. to decentralise the legal staff and have them located with or close to the client base;
2. to become part of the management team and to provide the general legal guidance and advice to the operating entities;
3. to ensure that local laws and regulations are being complied with at the operating entities;
4. to be the conduit for conveying Corporate and Sector policies and procedures to the operating entities;
5. to assist Audit staff in ensuring that the policies and procedures are in place and being complied with;
6. to review corporate governance issues at the foreign subsidiaries and to assist in formulating a Corporate policy to ensure compliance;
7. to provide Corporate secretarial services to the European legal entities and to ensure compliance with local laws;
8. to assist the Tax Department in ensuring that subsidiaries are complying with local statutory filing requirements;
9. to provide a resource for European and US Northrop Grumman entities to call on for European legal advice;
10. to assist US and European entities to engage outside legal counsel in Europe and to assess the necessity to do so;
11. to provide support to Corporate Departments when dealing with European issues.

In addition, the following mechanisms have been put in place to ensure monitoring of European legal issues:

1. good understanding of client, products and internal workings of the operations;
2. locally adapted training programs respecting standards of conduct, ethics, export laws etc.
3. a European contracts review procedure;
4. specialisation in various legal fields;
5. regular meetings of the lawyers in the Department;
6. monthly activity report highlighting key legal matters in Europe;
7. adaptation of Corporate and Sector policies to meet European requirements;
8. working closely with Sector and Division counsel, as well as the International lawyers in the USA.

Risk Mitigation Tools

1. Have lawyers co-located with operational management, but remain part of corporate staff to ensure independence.
2. Include a lawyer in regular staff meetings.
3. Participate in Program reviews.
4. Put in place legal review procedures, which clearly indicate when matters must be sent to the Law Department for review. Incorporate these into the local entity operating procedures.
5. Have regular Law Department meetings, which permit lawyers to exchange views, discuss programs and issues.
6. Prepare weekly activity report identifying key issues.
7. Prepare a Monthly Key Issues Report setting out the primary matters worked on during the past month, highlighting potential issues.
8. Encourage areas of specialisation within the Department to address the key legal areas raised in the day to day business;

Key Practice Areas:
 - public procurement
 - employment
 - ADR
 - tax
 - corporate structures
 - IP
 - competition
9. Provide for regular training and further education programs to keep current in local law changes and to cover areas of specialisation.
10. Implement an IT program to establish best use of technology to enhance communication:
 - within the Department
 - within the Company
 - with external advisors and suppliers
11. Create a risk management team together with Internal Audit:
 - identify risk areas
 - propose mechanisms and processes to control these risks
 - have regular audits to review adequacy of risk mitigation processes
12. Maintain and update your list of external advisors. Have ready the correct team to deal with any legal issue that could arise out of the Company's business.



Risk Management Across Borders Managing Risk in International Joint Ventures

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ACC Europe 2005 Annual Conference: Lawyers Across Borders:
Succeeding in Transnational Business

June 19-21, Conrad Hotel,
Brussels, Belgium



Managing Risk in International Joint Ventures

1. Risk sharing vs. relationship risk
2. Uncover risks through due diligence
3. Practical tips to manage risk

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Risk sharing vs. relationship risk

- Risk sharing
 - Typically involves the split of R&D and/or startup costs
 - Works best on discrete, quantifiable projects
 - Should identify and quantify risk before seeking to share it
- Relationship risk
 - Ceding some control to another, possibly a competitor
 - typically far exceeds risk sharing gain
- How risky are joint ventures? Look at the surveys:
 - 70% of JVs either fail outright or fall far short of achieving goals
 - Less than 1 in 5 companies ever recover their costs from a JV
 - Much higher success rate for companies with little or no overlap

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Uncover risks through due diligence

- Political risk
 - government policy stability (e.g., nationalization, foreign ownership, currency convertibility, repatriation, criminalization)
 - Terrorism, uprisings, war, kidnapping
- Natural risk (e.g., severe weather, disease)
- Economic risk
 - Currency devaluation, foreign exchange fluctuation
 - Inflation and unemployment
 - Infrastructure
- Government approvals, licenses, and permits
 - Could greatly delay implementation plans
 - Failure to obtain may frustrate JV intent
- Intellectual Property risk
 - Enforcement against IP infringement
 - Lending a trade name to JV could result in loss of ownership

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Practical tips to manage risk

- Conduct detailed due diligence on JV partners, contributed assets
- Try upfront to avoid management deadlocks
 - Allocate responsibilities, establish clear deadlock resolution process
 - Take steps to avoid insufficient operating capital
- Seek independent management to prevent:
 - Loss of focus, shifting loyalty, confidentiality issues
 - Conflicting legal duties of JV directors
- Choice of law and dispute resolution provisions are highly important
 - Common vs. civil governing law
 - Courts vs. arbitration, forum
- Focus on termination of the JV relationship in the formation contracts
 - Extremely costly (money, time, distraction) to resolve later
 - Allocate property in all termination scenarios whether JV continues or ends:
 - By a party (breach, insolvency, sale of interest, change of control, etc)
 - By the JV (insolvency, no operating capital, sale, etc)
 - Other (expiration, force majeure, etc)