



# rewarding anti-corruption compliance

since 2006

- [about us](#)
- [certification](#)
- [validation](#)
- [tools](#)
- [advisory & training](#)
- [contact](#)

[home](#) ▶ [Experts](#)

[news](#)

- Share
- Share
- Tweet
- Email



## Top five governance principles for the corporate legal function

Daniel Lucien Bühr  
Counsel with [LALIVE](#)



Herbert Wohlmann  
Of Counsel with [Baker & McKenzie](#)

Daniel Lucien Bühr was Regional Counsel for Europe, Russia, Near East and Africa with Schindler Group (Elevators and Escalators). Since 2011 he has been Counsel with LALIVE ([www.lalive.ch](http://www.lalive.ch)). He advises clients on Corporate Law, with a focus on corporate governance and compliance management systems. He is, among others, a member of the ISO Technical Committee on Compliance Management Systems.

- [Anti-Corruption Experts: New York Edition](#)  
**2013-10-28**
- [C5 Managing Third Party and Counterparty Relationship Risks, Paris](#)  
**2013-10-09**
- [Oil and Gas Anti-Corruption & Compliance Congress, Houston, TX](#)  
**2013-09-23**
- [Companies with top compliance programs exchange best practices](#)  
**2013-07-18**

[▶ see all news](#)

stay  
connected



Receive our newsletter

Herbert Wohlmann was General Counsel with Clariant AG, a specialty chemical company, and a Lecturer at the Universities of Zurich and Basel. After his retirement he joined Baker & McKenzie ([www.bakermckenzie.com](http://www.bakermckenzie.com)) as Of Counsel. He advises clients on Corporate Law, Anti-trust Law and Compliance.



▶ see past newsletters

## Is there a need for good governance in the Corporate Legal Function?

The legal environment for corporations, especially for listed ones, has completely changed within the last ten years. Globalization and digitalization, the financial and the subsequent corporate confidence crisis as well as increased regulation and enforcement of the law have significantly changed the legal landscape. Good corporate governance, strict compliance with the law and effective risk management have become key elements of diligent and sustainable corporate management.

Should companies, as a result of the important changes, review and adjust their legal and compliance functions to the new challenges? Is there a need to think about good governance of the corporate legal function (as well)? In our opinion, the effectiveness of the corporate legal (and of the corporate compliance) function depends first of all on a best practice governance framework. Without this foundation, companies' legal management systems will be incomplete and only to some extent effective.

What guidance do Corporate Governance Codes, such as the [New York Stock Exchange Listed Company Manual](#), the [UK Corporate Governance Code](#) or the German and the Swiss Code give on best practice corporate legal and compliance management? Unfortunately, none of the codes systematically addresses the governance principles of the legal and the compliance function. The only common principle regarding legal and compliance management is that the board of directors bears ultimate responsibility for effective internal controls, risk management and compliance. And since the financial crisis, most codes require arrangements by which staff of the company can, anonymously and in confidence, raise concerns about possible improprieties.

If the governance codes (and, besides, also statutory law, for instance EU law) do not establish governance principles for the corporate legal and the corporate compliance function, what are these principles? Based on our in-house experience and from an independent external point of view, we have established five governance principles of the corporate legal function.

### 1<sup>st</sup> Governance Principle – The Board's Role and its Relation to the Legal Function

*The board of directors supervises the effectiveness of the legal function and takes action, if necessary.*

*Non-executive board members who are lawyers do only provide legal advice to the board and do not interfere with operational legal management of the company. General Counsel who are executive board members regularly report to the board on content and effectiveness of their legal management.*

The principle underlines the board's ultimate responsibility for effective legal management. The board warrants that the corporate legal function is operatively independent from individual (lawyer) board members. In case the General Counsel is an executive board member, the General Counsel shall report to and be supervised by the entire board. In essence, the principle requires companies to define the roles and responsibilities of the board and the General Counsel regarding legal management.

## **2<sup>nd</sup> Governance Principle – The Place at the Table**

*The General Counsel at Group, Division and Country level are, as a rule, a member of the respective management committee. They are systematically involved in all important decision taking processes; they co-decide and bear full responsibility.*

Many, if not to say most, corporate legal accidents are a result of non- or late involvement of the General Counsel in top-level decision-making processes. The General Counsel can only fulfil her/his role if she/he is systematically and from the beginning on involved in all important steps of the corporate decision making process. Not having the General Counsel at the table is – if the company is in luck – inefficient and (only) costs money or – if things go wrong – highly damaging to the reputation, the assets and the freedom of the company and its managers.

## **3<sup>rd</sup> Governance Principle – Independence of the Legal Function**

*The General Counsel is a business partner and a guardian to the company. She/he reports to the CEO and – in matters of strategic importance – to the chairman of the board of directors. The chairman of the board approves her/his appointment and termination.*

The General Counsel has a dual role: She/he is a business partner who assists management in achieving the operational goals of the company. At the same time, the General Counsel is a guardian to the company. If a conflict between both roles arises, the interests of the company must prevail. The guardian role of the General Counsel is an important element of the checks and balances of a company. The General Counsel can only be a guardian to the company, if she/he is independent. The key elements of organizational independence of the General Counsel are a direct (solid) reporting line to the CEO and a (dotted) strategic reporting line to the board. The dotted reporting line to the board and the Chairman's approval of the General Counsel's appointment and termination are key organizational measures for an

effective independent legal function.

#### **4<sup>th</sup> Governance Principle – Appropriate Resources of the Legal Function**

*The General Counsel and the legal department have appropriate authority and resources to fulfil the assigned tasks. The board verifies and records this annually.*

The General Counsel's and the legal function's roles and responsibilities should be noted in writing (organizational regulation, job profile etc.). The written profile of the legal function will determine the internal authority and the resources required for achieving the goals of the company. Diligent legal management requires adequate internal authority and appropriate resources of the legal function. It is the board's ultimate responsibility to assure itself that the legal function possesses the required financial and human resources, infrastructure and tools. As a rule of thumb, the budget of the legal function should at least amount to 0.3 to 0.5% of the company's turnover/gross earnings.

#### **5<sup>th</sup> Governance Principle – Remuneration**

*The salary of employees who are exercising control functions (e.g. employees in the legal, compliance, internal audit, regulatory and risk management functions) should be commensurate with their responsibilities and qualifications and on par with other senior executives of the company. Their compensation should correspond to an increased fixed salary or to an adequate base salary and a bonus which is not tied to the financial results of the company.*

For reasons of independence and for the avoidance of conflicts of interest, the remuneration of in-house counsel (and any other control function) should not depend on the achievement of financial results. Ideally, in-house counsel should be compensated by an increased fixed salary. The internal remuneration and promotion process should not in fact stimulate or reward legal leniency.

#### **Summary**

Effective corporate legal management depends first of all on good corporate governance. The General Counsel can only fulfil her/his role as a business partner and a guardian to the company if the essential governance elements are in place. Companies should therefore verify the organizational independence of the General Counsel function and the allocation of adequate authority and appropriate resources. Diligent management of any company requires a best practice governance framework for the corporate legal function. The reward is an effective legal management system in the long run and sustainable success of the company.

(Summary of an article published in December 2012 in the Swiss journal GesKR, Gesellschafts- und Kapitalmarktrecht)

Daniel Lucien Bühr  
Counsel with [LALIVE](#)  
Löwenstrasse 2, 8001 Zurich  
Tel: +41 44 319 80 00  
[dbuhr@lalive.ch](mailto:dbuhr@lalive.ch)

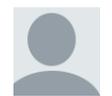
Herbert Wohlmann  
Of Counsel with [Baker & McKenzie](#)  
Holbeinstrasse 30, 8034 Zurich  
Tel: +41 44 384 14 14  
[herbert.wohlmann@bakermckenzie.com](mailto:herbert.wohlmann@bakermckenzie.com)

July 2013

---

**Tags :** LALIVE, corporate governance, Daniel Bühr, Herbert Wohlmann

**0 comments**



Leave a message...

**Best** ▾ Community

Share

---

No one has commented yet.

---

## certification

- [about anti-corruption certification](#)
- [certification process](#)
- [certification committee](#)
- [accredited auditors](#)
- [certification terms of reference](#)
- [faq on anti-corruption certification](#)
- [certificates awarded](#)

## about us

- [our story](#)
- [our approach](#)
- [our people](#)
- [our partnerships](#)

## contact us

Name (first and last)

Email

Message