



Précis Paper

Compliance Issues for In-House Counsels

A discussion on the role of in-house counsels and the issues pertaining to compliance in a business environment.

Discussion Includes

- The role of in-house counsel
- Differences between in-house and private practice
- Compliance and the role of in-house counsel
- Skills for dealing with compliance issues
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Compliance Issues for in-house counsels

1. In this edition of BenchTV, Blanka Moss (General Counsel- Schindler Lifts, Sydney) and Peter Matthews (Associate AR Conolly and Company, Sydney) discuss the role of in-house counsels and the issues pertaining to compliance in a business environment.

The role of in-house counsel

2. An in-house counsel is the legal officer for a corporation. As a legal officer they are officers of the court and must abide by the law just as any other lawyer in private practice.
3. The main in-house counsel is the General Counsel and they report directly to the Board of the Corporation.
4. In-house counsel do not charge for advice however they must earn the respect of the Board by giving proper advice.
5. The advice of in-house counsel must be independent, proper legal advice as it is relied upon by the Board of the corporation.
6. In-house counsel provide advice both from a legal and a business perspective.
7. Some in-house counsel, for example Blanka Moss the General Counsel for Schindler lists are judged on Vital Few Objectives (VFOs) which are business objectives.
8. At Schindler lists, VFOs are the product of the Managing Director and the General Counsel's ideas and mutual consent.
9. In-house counsel deals with many different legal issues and in regard to Schindler Lifts, one of the big issues that the lift company industry deals with is allegations of price fixing.

Differences between in-house counsel and private practice?

10. Lawyers in private practice are very pigeon holed.
11. This can be contrasted with in-house counsel who deal with a plethora of legal issues in any one matter. Lawyers in private practice are specialised and typically only deal with the legal issue in which they specialise.
12. Another difference between in-house counsel and private practice lawyers is in regard to instructions. In private practice, instructions are received from clients whereas in-house counsel receive instructions from multiple persons including the Board, Operational Directors and Corporate.
13. In-house counsel receive experience in a business environment and in all facets of the law. They do not specialise in any one area of law and therefore often enlist private practice lawyers to act as an intermediary, litigate and to provide specialised advice.

Compliance and the role of in-house counsel

14. Compliance simply means to comply with the legal aspects of running an organisation.
15. The General Counsel must ensure that the organisation complies with all the laws.
16. Consumer and Competition law is one of the biggest issues currently.
17. Many organisations have a compliance section and a legal section which work together.
18. At Schindler Lifts, compliance is a direct issue for in-house counsel, who deals with both compliance and legal issues.
19. When both compliance and legal is undertaken by the same person/persons advice can be given which will ensure that both areas are covered.
20. At Schindler Lifts, compliance investigations from competitors are undertaken and dealt with internally.
21. Most of the time, however compliance issues are raised by clients and not competitors.
22. Organisations try to lift the bar with their compliance program to a standard above which the law sets.
23. For example, the Code of Conduct at Schindler does not allow for a conflict between a business interest and a personal interest, which is not a standard prescribed by law.

Skills for dealing with compliance issues

24. Lawyers are generally pedantic, analytical and very legally based.
25. Compliance requires soft skills, such as trust, being able to listen and being empathetic.
26. These skills are important when it comes to compliance because they lead to a tendency for people to be more likely to report things.
27. When compliance investigations are undertaken, it is essential that nobody knows about them except for those who are involved.
28. Once the investigation is conducted, a report is provided to the Board with findings and recommendations. The Board has no influence on the findings and recommendations.
29. It is important to have the trust of both the employees, as well as the Board to do the right thing in a compliance investigation.
30. Conciliation meetings are often successful in solving disputes between employees.
31. It is important to ask the aggrieved party 'what would you like as a resolution,' to ensure that they feel as though they are being heard.
32. The General Counsel liaises with different people within the company throughout an investigation but is primarily responsible for the investigation and the outcome.

Towards a practical approach to compliance

33. A simple compliance program is important to achieving a practical approach to compliance.

34. Schindler Lifts has a 5-point code of conduct which covers every aspect of compliance from the important things for the company to the important things for the people.
35. It is also essential to train people in compliance issues, as well as having an open forum to allow for people to ask questions
36. People tend to be more comfortable bringing up compliance in a training environment as opposed to a business environment.
37. It is imperative for the General Counsel to have a good working relationship with all employees.
38. Good listening skills is essential to achieving an effective compliance program, which is not intimidating.
39. Compliance issues can be intimidating due to the fact that when one raises the issue of compliance and the law, people tend to fear that there is something wrong.
40. It is important to let the employee know that they should come and talk to you, not when you have done something wrong but when they are not comfortable with what the customer wants to do.
41. It is essential to make the employee a partner in the relationship rather than operate under a 'them and us' attitude.
42. Training is an important VFO in the legal department to keep staff up to date on the regulatory work that affects the way the company operates.
43. Corporate at Schindler Lifts undertake spot-training with employees informing them of the latest news within the organisation.
44. Further, management makes themselves present and takes part in other meetings in other departments, such as sales meetings.
45. It is important to make compliance an inherent part of the business and not just look at compliance as an issue every now and then.
46. At Schindler Lifts, which is a Swiss Company, there is a delicate balancing act between the Australian Law and compliance laws and the International Directors of the company wishing to adopt their policies as a foundation for their company.
47. There is no 'lift law', there is a 'lift code' which deals with all the safety issues and the technological issues which must be complied with.
48. Currently it is the Australian standard which must be complied with however in the next 18 months they will be transitioning to the International standard.

Takeaways for Practitioners

49. In-house lawyers are lawyers and officers of the Court.
50. They are at the same standard as private practitioners and the only difference is that they work for one employer.
51. The skills required for in-house and for private practice are different as there is generally a broad scope of legal issues for in-house lawyers to control which gives much more scope to

develop skills such as business acumen, relationships with employees, relationships with customers.

BIOGRAPHY

Blanka Moss

General Counsel – Schindler Lifts, Sydney

Blanka has been the General Counsel at Schindler Lifts Australia since 2004. She has also been a Councillor of the Law Society of NSW and a Chartered Secretary. She is an active member on a number of Committees including Corporate Lawyers, Ethics, Diversity and Inclusion.

Peter Matthews

Associate – AR Conolly and Company

Peter Matthews is an associate at AR Conolly and Company and holds a Bachelor of Law and a Bachelor of Science.