



Legal Issues Business Leaders Need To Know in 2014

A compilation of time-sensitive and trending legal and regulatory issues that general counsels and business leaders should be aware of in 2014.

1 Caution is the keyword in the M&A world

Following the Great Recession, businesses are running leaner and have strong balance sheets, which are attracting buyer interest, but the government has created additional regulatory hurdles. Potential buyers are treading carefully and more discussions are terminating before deals even get underway. That said, companies have access to plenty of money to invest in promising businesses, and 2014 looks like it will be busier than 2013.

2 Preventing costly data breaches will continue to be a challenge

Data breaches can result in damage to the brand, litigation exposure and significant costs for businesses. A growing body of laws in the U.S. and abroad govern data breach notification requirements. In addition to taking steps to minimize the potential for a breach, organizations should understand what personal information they hold, where it is held, how it is protected, what can be done to mitigate the risk of a breach by a contractor, and develop a data breach response plan.

3 Hundreds of new Internet extensions pose challenges, opportunities

The Internet Corporation for Assigned Names and Numbers (ICANN) is in the process of approving the use of hundreds of new top level domain names (known as TLDs or extensions), which are to the right of the dot in website addresses. Examples of current TLDs are .com, .org. and .net. An example of a new domain could be www.xyz.luxury. It's vitally important that companies stay on top of this issue to protect brand and market share in the expanding cyber marketplace. Imagine someone takes your company name or slogan and appends it to a new extension. The resulting new website could confuse consumers and harm your brand. General counsel, working with marketing and IT departments, are advised to take stock of trademarks that need protecting and become knowledgeable about which new TLDs pertain to their industry.

4 Social media presents disclosure risks for public companies

An improper disclosure or omission of material information that can affect investor decisions is easy to do on Facebook and Twitter. Therefore, well written social media guidelines are critical to avoid a securities law violation. The guidelines can designate who tweets or posts and can require multiple eyes on information, even review from outside counsel, before information goes public.

5 Vigilance required for Affordable Care Act compliance

Determining the status of your business under the ACA's employer mandate (which takes effect for most eligible businesses in 2015) requires counting employee hours worked in 2014. The IRS and the Labor Department are devoting more money and manpower to uncovering employer misclassification of employees as independent contractors for the purpose of reducing healthcare coverage costs. Violators could pay significant penalties.

6 Companies need to be aware of Form I-9 and E-Verify updates

Changes to Form I-9 and E-Verify make compliance even more challenging. For example, if an employee inputs an email and phone number in Section 1 of the Form I-9, the employer using E-Verify must then input that information into the system. To stay on top of the latest developments, read AGG's blog, "Immigration Compliance and Background Screening."

7 Stepped up FCPA enforcement poses a greater risk for global businesses

Every U.S. company, U.S. citizen, U.S. resident and U.S. affiliate of a foreign business is subject to the antibribery provisions of the Foreign Corrupt Practices Act. Increases in FCPA-related settlements with the Justice Department and resulting penalties suggest that U.S. regulators have intensified their antibribery compliance efforts.

8 Government fraud investigations likely to remain vigorous

The focus on healthcare fraud-related investigations and recoveries by the government shows no signs of abating in 2014. The Justice Department is using the False Claims Act to recover billions of federal dollars across several industries, but particularly in healthcare and pharmaceuticals, which account for about 70 percent of recoveries. The implementation of an effective compliance program is more important than ever. If a potential criminal problem arises, a robust compliance program can be a significant factor that the government considers when deciding whether to prosecute. If a company is prosecuted, the existence of an adequate compliance program may limit the potential penalty.

9 Wealth transfer and succession planning critical for private companies

Keeping a business in the family often requires thinking about ways to reduce estate taxes and transfer property to family members while the controlling shareholder is alive so that when that person dies it's not necessary to draw substantial capital from the business. Without sufficient planning, a business could be forced to sell to pay taxes or because there is not clear succession.

10 LPAC and advisory board important in private equity fund formation

Private equity funds are not required to have either a limited partner advisory committee (LPAC) or a private equity fund advisory board, but each serves an important function. LPACS address conflict of interest, valuation methodology, and consents or approvals pre-defined in the governing documents. Advisory boards provide industry expertise, assist with the sourcing of transactions, and provide credibility for the fund and general partner, particularly if the fund is small or emerging.

11 Non-recourse loans require careful review

Because of market challenges and disasters, lenders have grown more cautious and expanded the scope of liability for borrowers and guarantors under non-recourse loans. Just as lenders need to be cautious, borrowers need to be careful in reviewing loan commitments and documents to make sure the terms and non-recourse provisions are what they expected.

12 Omissions can jeopardize a real estate deal

A term sheet or letter of intent that is too general often fails to address issues important to the company, and these early omissions can create problems during document negotiation when the company's leverage may decline. The best time to obtain legal advice is when your company is considering a term sheet or letter of intent, even when the document is prepared by the company's real estate broker.

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