

Balancing Legality and Ethics In-house

Sue Reisinger, Corporate Counsel

November 10, 2014



Stuart Levey *Photo: Roy Riley*

For global companies, the questions of “Is it legal?” and “Is it right?” increasingly are merging into one, according to Stuart Levey, chief legal officer of HSBC Holdings in London.

That message was at the heart of remarks Levey delivered Nov. 6 to some 100 general counsel and senior legal directors in London at the [General Counsel Summit 2014](#), sponsored by The Economist. CorpCounsel.com recently obtained a copy of his remarks.

“No doubt this [legal vs. right question] creates a certain ambiguity that poses challenges for us as lawyers,” Levey admitted.

He joined HSBC in January 2012 after serving as the first undersecretary for terrorism and financial intelligence in the U.S. Department of the Treasury for Presidents George W. Bush and Barack Obama. He also worked most recently as a senior fellow at the Council on Foreign Relations. He had several jobs in the U.S. Department of Justice’s deputy attorney general’s office, including as the principal associate deputy

attorney general. Until 2001, Levey was a litigator in private practice with a Washington, D.C., law firm that became part of Baker Botts.

“When I moved to the private sector, some people told me that the transition from a government job, especially one in enforcement, to the kind of role I have now would require a major shift in mindset,” Levey said. “Some expressly urged me to consider that, if I took an in-house role, there might be significant pressure to bless any course of action that does not violate the law.”

Levey’s “aha” moment came when he read the work of Ben Heineman Jr., the former general counsel of General Electric Co. (and occasional contributor to CorpCounsel.com), who urged GCs to be lawyers/statesmen, to consider not just what is legal but also what is right, and to advise not only about current problems but about potential future ones as well.

Levey arrived at HSBC with exactly that mandate: to steer a company in legal turmoil into a smoother future course. The bank was in the middle of government investigations for various alleged financial crimes, including antimoney-laundering failures that allowed drug cartels to launder hundreds of millions of dollars. The bank eventually signed a five-year deferred prosecution agreement with the DOJ, agreeing to beef up its compliance and to pay a whopping \$1.9 billion in penalties.

Under a new chief executive and new board leader, Levey said the bank “committed to put in place globally the highest or most effective standards for combating financial crime that it was subject to anywhere, and to test the application of these standards robustly.” The legal department would be centralized and report to a single global GC, Levey, as opposed to the previous structure in which each country’s lawyers reported ultimately to the CEO in each region, enforcing only that country’s laws.

It was Levey’s job to help embed the new global approach in some 850 lawyers in 50 countries. “We essentially committed to implement U.S. antimoney-laundering standards in our operations all over the world—even where we were not legally required to do so,” he said.

Levey cited several reasons for the new approach, including the tougher enforcement environment following the financial crisis of 2008; the fact that regulators are holding companies accountable for very broad standards, often years after the questionable conduct occurred; overlapping regulatory jurisdictions; and the extraterritorial application of laws.

“When it comes to financial crime, what a company does in Mexico or Singapore or the UAE is very likely to be judged by authorities elsewhere, and especially in the United States or in Europe,” Levey explained.

Helping a company through such an environment requires its senior lawyers not only to know the law but also to consider how the law might evolve. Lawyers must consider how the company might be judged based on “broad standards, by several regulators, perhaps in several different jurisdictions, all acting with the benefit of hindsight,” Levey said.

For the most part, he added, lawyers aren’t trained for that.

“In my nearly three years at HSBC, I have come to believe that the approach Ben Heineman described, which first struck me as aspirational, perhaps unattainably so, is actually a basic requirement for a senior in-house lawyer in a global, highly regulated corporation,” Levey concluded.

He added, “I am optimistic that those challenges can be met so long as the top management and board foster the right culture, and chief legal officers do their part to encourage and foster lawyers who approach their roles with a broader mindset.”