

Legal Environment of Business

Lecture 6: Corporate Social Responsibility, Corporate Governance and Legal Risk Management

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Lecturer



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Experience on legal environment of business:

- General Counsel, Regional Manager, Oral Hammaslääkärit plc 2012-
- Manager, Deloitte 2011-2012
- General Counsel, Lassila & Tikanoja plc 2008-2011
- Legal Counsel, Lassila & Tikanoja plc 2005-2008

Agenda

1. Warm Up!
2. Risk Management from the Legal Point of View: Regulatory basis of risk management
3. Legal Risk
4. Tools of (legal) risk management

1. Let's start! Warm Up!

What is the most important task of the legal expert in the company?

... What are we paid for?



One opinion...

- **Legal expert**
 1. Uses regulation as a tool of supporting and developing business;
 2. Manages legal risks



2. Risk Management from the Legal Point of View: Regulatory Basis

2.1 Regulatory basis of (legal) risk management

(1/3)

- *Purpose of a company is to generate profits for the shareholders, unless otherwise provided in the Articles of Association (LLCA Ch. 1 5 §).*

On the other hand...

- *The management of the company shall act with due care and promote the interests of the company. (LLCA Ch. 1, 8 §)*



> **In practise, generating profit is continuous balancing between risk taking and risk management.**



2.1 Regulatory basis of (legal) risk management

(2/3)

- In Finnish law, there are no provision which expressly obligates the Board of Directors ("BoD") (or other organ) to carry out risk management.
- Provisions of mandatory law and soft law concern mainly reporting about risks (together with future perspectives).



=> Risk management is a part of BoD's general duty to arrange administration and the appropriate organisation of the company's operations, as well as to be responsible for the appropriate arrangement of the control of the company's accounts and finances (LLCA Ch. 6, 6.2 §)

2.1 Regulatory basis of (legal) risk management: Liability

(3/3)

- If the BoD has not arranged risk management process in the company, the BoD may have act against their general duty to act with due care.
- Soft law gives guidelines for interpreting content of "due care".
- However, liability and due care does not mean that the BoD should not take any risks.
- **Business Judgment Rule:** The BoD (and the management) is immune from liability for loss incurred if the decision were made in good faith and based on sufficient reasoning and survey.



3. Legal Risk

What is Legal Risk?

John F. Kennedy once said:

**“When written in Chinese, the word crisis is composed of two characters.
One represents danger and the other represents opportunity.”**

Legal Risk...

- **An operative risk**
- **Is present in all company's operations (Business, HR, Finance etc)**
- **Risk of loss:**
 - Indemnity for damages
 - Penalties based on a contract
 - Lawsuits and litigation process
 - Brand and image damages
- **Always negative**

1. Insufficient contract terms:

- A business manager in charge of a business unit has concluded a service contract without consulting a legal counsel. The Business Manager deleted the term concerning Limitation of Liability from the contract, because s/he did not consider it relevant.
- Legal risk?
 - Risk of indemnity liabilities
 - Risk of brand damages
- How to manage this legal risk?
 - Defining an enough simple contract process and including it into the company's management system.

1. Behaviour of the own personnel

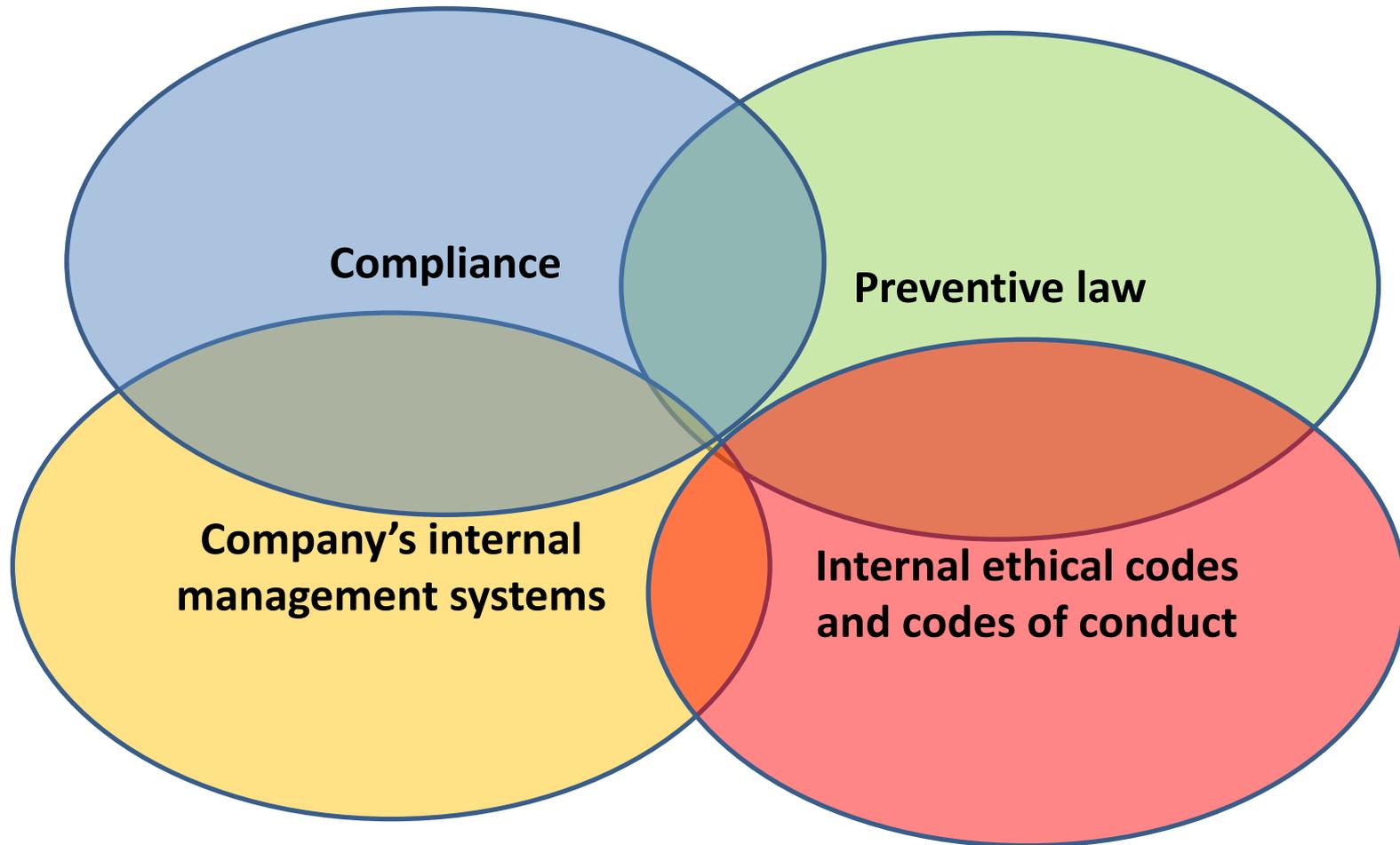
- An associate working in a law firm discloses some confidential customer information to his friends in a party.
- Legal Risk?
 - Unethical behaviour => liability and brand damages
- How to manage this legal risk?
 - Preparation, implementation and supervising ethical codes of the company

1. Changes in the regulation concerning the company's business

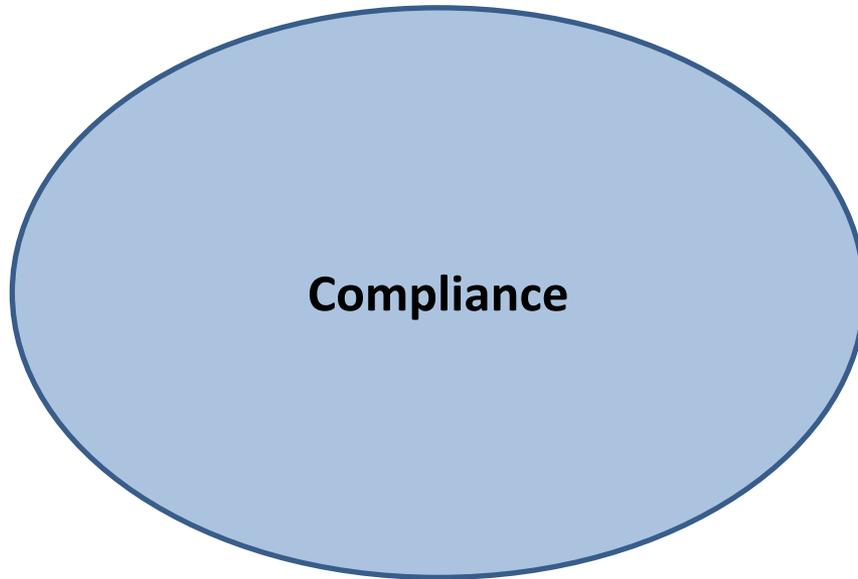
- The company's market and operating environment changes due to significant reduction of the monetary state aids for the company's customers.
- Legal Risk?
 - The company (and the legal department) does not recognise the influence of the changes in the regulation in time => Business crashes
- How to manage this legal risk?
 - The legal department enough involved in business and recognises the relevant regulation in term of the business branch in question.

3. Tools of (legal) risk management: cross point of several disciplines – and colleagues!

Tools of (Legal) Risk Management



Tools of (Legal) Risk Management



Compliance:

= ensuring that the requirements of laws, regulations, industry codes and organisational standards are met.

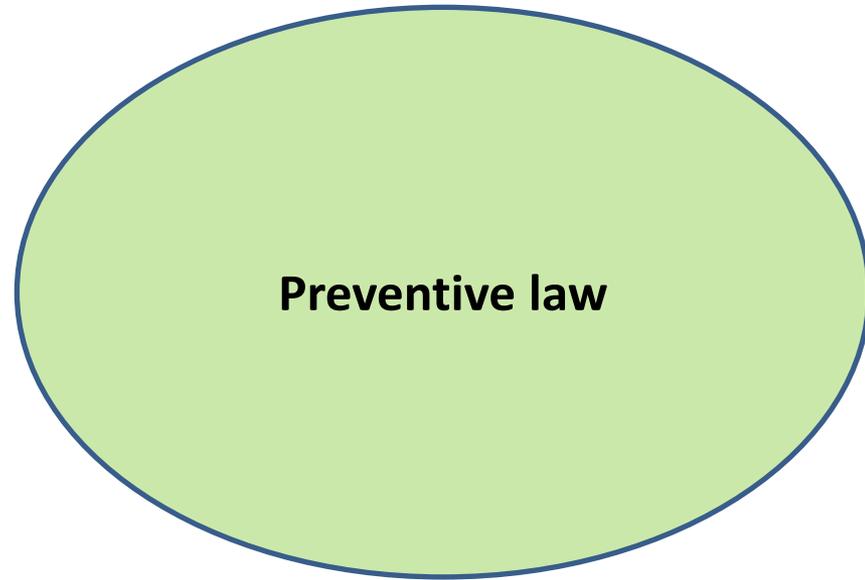
Legal compliance:

= effective control of legal risks in order to ensure that the laws is complied with.

Tools of (Legal) Risk Management

Preventive law:

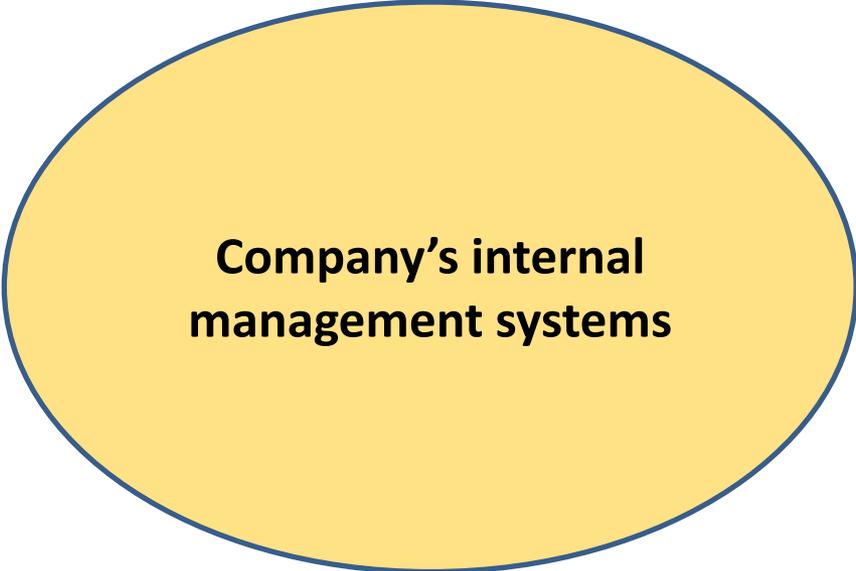
= Use of legal knowledge well in advance in business planning – in order to avoid mistakes and damages afterwards



Tools of (Legal) Risk Management

Management System:

= The framework of processes and procedures used to ensure that a company can fulfill all tasks required to achieve its objectives.

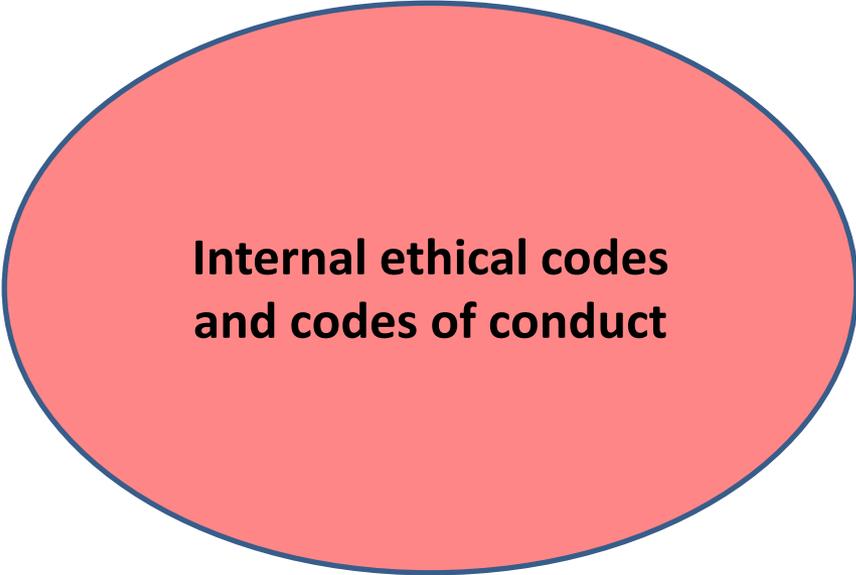


**Company's internal
management systems**

Tools of (Legal) Risk Management

Business Ethics

= Professional ethics, ethical principles and moral questions in business



Internal ethical codes
and codes of conduct

Thank You!